

**CHAPTER 338. PROFESSIONS AND OCCUPATIONS**

**EXAMINATION IN BASIC SCIENCES**

**Act 59 of 1937**

**338.1-338.13 Repealed. 1972, Act 172, Imd. Eff. June 16, 1972.**

**INVESTIGATING AUTHORITY OF DEPARTMENT OF LICENSING AND REGULATION**  
**Act 99 of 1972**

AN ACT to provide the department of licensing and regulation with investigatory authority.

**History:** 1972, Act 99, Imd. Eff. Mar. 29, 1972.

*The People of the State of Michigan enact:*

**338.21 Definitions.**

Sec. 1. As used in this act:

- (a) "Department" means the department of licensing and regulation.
- (b) "Director" means the director of the department.

**History:** 1972, Act 99, Imd. Eff. Mar. 29, 1972.

**338.22 Investigation and determination of complaints.**

Sec. 2. (1) The director shall investigate all complaints of alleged violations against or by persons licensed by any board or agency of the department, if the board or agency fails to initiate an investigation within 60 days after the filing of a complaint.

(2) The director shall forward complaints investigated under this section to the board or agency of the department concerned and shall inform the board or agency concerned of all investigations conducted by the director under this section.

(3) Final determination of all complaints shall be forwarded to the director by each board or agency accompanied by a roll call vote of the board or agency.

**History:** 1972, Act 99, Imd. Eff. Mar. 29, 1972.

**SALE OF MEDICAL OR DENTAL PRACTICE**  
**Act 297 of 1965**

AN ACT regulating the sale or conveyance of the practice of a healing system; to require the reporting of such sale or conveyance and to impose a penalty.

**History:** 1965, Act 297, Eff. Mar. 31, 1966.

*The People of the State of Michigan enact:*

**338.31 Sale or conveyance of medical or dental practice; notice to state board.**

Sec. 1. Any person who sells, purchases or assumes the practice of any person licensed to practice medicine or dentistry in this state from the individual or his estate shall notify, within 10 days of sale, purchase or assumption, the state board which licensed or registered the practitioner, of the sale, purchase or assumption.

**History:** 1965, Act 297, Eff. Mar. 31, 1966.

**338.32 Violation of act; misdemeanor.**

Sec. 2. Any person violating any provisions of this act shall be deemed to be guilty of a misdemeanor.

**History:** 1965, Act 297, Eff. Mar. 31, 1966.

## **OCCUPATIONAL LICENSE FOR FORMER OFFENDERS**

### **Act 381 of 1974**

AN ACT to encourage and contribute to the rehabilitation of former offenders and to assist them in the assumption of the responsibilities of citizenship; to prescribe the use of the term “good moral character” or similar term as a requirement for an occupational or professional license or when used as a requirement to establish or operate an organization or facility regulated by this state; and to provide administrative and judicial procedures to contest licensing board or agency rulings thereon.

**History:** 1974, Act 381, Eff. Apr. 1, 1975;—Am. 1978, Act 294, Imd. Eff. July 10, 1978.

**Compiler's note:** For transfer of powers and duties of adult foster care licensing from the department of social services to the director of the department of commerce, see E.R.O. No. 1996-1, compiled at MCL 330.3101 of the Michigan Compiled Laws.

*The People of the State of Michigan enact:*

#### **338.41 “Good moral character” and “principal department” defined.**

Sec. 1. (1) The phrase “good moral character”, or words of similar import, when used as a requirement for an occupational or professional license or when used as a requirement to establish or operate an organization or facility regulated by this state in the Michigan Compiled Laws or administrative rules promulgated under those laws shall be construed to mean the propensity on the part of the person to serve the public in the licensed area in a fair, honest, and open manner.

(2) As used in this act, “principal department” means the department which has jurisdiction over the board or agency issuing the license.

**History:** 1974, Act 381, Eff. Apr. 1, 1975;—Am. 1978, Act 294, Imd. Eff. July 10, 1978.

**Compiler's note:** For transfer of powers and duties of adult foster care licensing from the department of social services to the director of the department of commerce, see E.R.O. No. 1996-1, compiled at MCL 330.3101 of the Michigan Compiled Laws.

For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

#### **338.42 Judgment of guilt in criminal prosecution or judgment in civil action as evidence in determining good moral character; notice; rebuttal.**

Sec. 2. A judgment of guilt in a criminal prosecution or a judgment in a civil action shall not be used, in and of itself, by a licensing board or agency as proof of a person's lack of good moral character. It may be used as evidence in the determination, and when so used the person shall be notified and shall be permitted to rebut the evidence by showing that at the current time he or she has the ability to, and is likely to, serve the public in a fair, honest, and open manner, that he or she is rehabilitated, or that the substance of the former offense is not reasonably related to the occupation or profession for which he or she seeks to be licensed.

**History:** 1974, Act 381, Eff. Apr. 1, 1975;—Am. 1978, Act 294, Imd. Eff. July 10, 1978.

**Compiler's note:** For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

#### **338.43 Using, examining, or requesting certain criminal records prohibited; prerequisites for furnishing criminal records; rules.**

Sec. 3. (1) The following criminal records shall not be used, examined, or requested by a licensing board or agency in a determination of good moral character when used as a requirement to establish or operate an organization or facility regulated by this state, or pursuant to occupational or professional licensure:

(a) Records of an arrest not followed by a conviction.

(b) Records of a conviction which has been reversed or vacated, including the arrest records relevant to that conviction.

(c) Records of an arrest or conviction for a misdemeanor or a felony unrelated to the person's likelihood to serve the public in a fair, honest, and open manner.

(d) Records of an arrest or conviction for a misdemeanor for the conviction of which a person may not be incarcerated in a jail or prison.

(2) A criminal record shall not be furnished to a licensing board or agency except by the principal department, and shall be furnished only after the director of the principal department or a person designated by the director has determined that the information to be provided to the board or agency meets the criteria set forth in this section.

(3) The director or a person designated by the director of the principal department shall promulgate rules for each licensing board or agency under that department's jurisdiction which prescribe the offenses or

categories of offenses which the department considers indicate a person is not likely to serve the public as a licensee in a fair, honest, and open manner. Each licensing board or agency may make recommendations to the director regarding the rules to be promulgated. The rules shall be consistent with this act and promulgated pursuant to Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws. Prior to the promulgation of the rules pertaining to a board or agency, all felonies shall be considered by the board or agency to be relevant to the ability or likelihood the person will serve the public in a fair, honest and open manner.

**History:** 1974, Act 381, Eff. Apr. 1, 1975;—Am. 1978, Act 294, Imd. Eff. July 10, 1978.

**Compiler's note:** For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

#### **338.44 Use of public records or other sources to determine person's fitness.**

Sec. 4. This act shall not bar the use by a licensing board or agency in its determination of a person's fitness, of any other public record, not related to arrest or prosecution, or of any other source of unbiased and accurate information.

**History:** 1974, Act 381, Eff. Apr. 1, 1975;—Am. 1978, Act 294, Imd. Eff. July 10, 1978.

**Compiler's note:** For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

#### **338.45 Finding person unqualified; statement; rehearing.**

Sec. 5. When a person is found to be unqualified for a license because of a lack of good moral character, or similar criteria, the person shall be furnished by the board or agency with a statement to this effect. The statement shall contain a complete record of the evidence upon which the determination was based. The person shall be entitled, as of right, to a rehearing on the issue before the board if he or she has relevant evidence not previously considered, regarding his or her qualifications.

**History:** 1974, Act 381, Eff. Apr. 1, 1975;—Am. 1978, Act 294, Imd. Eff. July 10, 1978.

**Compiler's note:** For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

#### **338.46 Judicial review; statement; order.**

Sec. 6. A person, aggrieved by a licensing agency or board determination regarding the person's possession of good moral character, if unsatisfied by his or her administrative appeal as provided in section 5, may bring an action in circuit court for a review of the record. If, in the opinion of the circuit court, the record does not disclose a lack of good moral character, as defined in this act, the court shall so state and shall order the board to issue the license, when all other licensing requirements are complied with.

**History:** 1974, Act 381, Eff. Apr. 1, 1975;—Am. 1978, Act 294, Imd. Eff. July 10, 1978.

**Compiler's note:** For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

#### **338.47 Power to discipline licensees not affected.**

Sec. 7. This act does not affect the power of a licensing agency to discipline licensees under its jurisdiction for prohibited acts of professional misconduct or dishonesty.

**History:** 1974, Act 381, Eff. Apr. 1, 1975.

**Compiler's note:** For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

### **PHYSICIANS AND SURGEONS**

#### **Act 237 of 1899**

**338.51-338.60 Repealed. 1959, Act 142, Imd. Eff. July 15, 1959;—1973, Act 185, Imd. Eff. Jan. 8, 1974.**

### **EXAMINATION OF MEDICAL STUDENTS**

#### **Act 56 of 1905**

**338.71, 338.72 Repealed. 1978, Act 368, Eff. Sept. 30, 1978.**

### **MEDICAL DIPLOMAS**

**Act 151 of 1899**

**338.81 Repealed. 1978, Act 368, Eff. Sept. 30, 1978.**

**STATE MEDICAL PERSONNEL**  
**Act 255 of 1968**

AN ACT relative to the appointment or election of medical personnel to state positions.

**History:** 1968, Act 255, Imd. Eff. July 1, 1968.

*The People of the State of Michigan enact:*

**338.91 Medical personnel; appointment to public positions, qualifications.**

Sec. 1. For the purpose of appointment to governmental positions or serving on state, county, city, township or other public agencies, departments or subsidiaries thereof wherever the laws of the state require the services of or the qualifications of a licensed medical doctor, either a licensed medical physician or a licensed osteopathic physician shall be entitled to equal consideration for such services in all cases except serving on the licensing boards thereof.

**History:** 1968, Act 255, Imd. Eff. July 1, 1968.

**OSTEOPATHY**  
**Act 162 of 1903**

**338.101-338.121 Repealed. 1974, Act 213, Imd. Eff. July 19, 1974;—1978, Act 368, Eff. Sept. 30, 1978.**

**CHIROPRACTIC**  
**Act 145 of 1933**

**338.151-338.159 Repealed. 1974, Act 207, Imd. Eff. July 11, 1974;—1978, Act 368, Eff. Sept. 30, 1978.**

**DENTISTRY**  
**Act 122 of 1939**

**338.201-338.221 Repealed. 1978, Act 368, Eff. Sept. 30, 1978;—1980, Act 299, Imd. Eff. Oct. 21, 1980.**

**OPTOMETRY**  
**Act 71 of 1909**

**338.251-338.262 Repealed. 1978, Act 368, Eff. Sept. 30, 1978.**

**PODIATRY**  
**Act 115 of 1915**

**338.301-338.308a Repealed. 1974, Act 148, Imd. Eff. June 12, 1974;—1978, Act 368, Eff. Sept. 30, 1978.**

**PHYSICAL THERAPY**  
**Act 164 of 1965**

**338.321-338.338 Repealed. 1976, Act 96, Imd. Eff. Apr. 27, 1976;—1978, Act 368, Eff. Sept. 30, 1978.**

**NURSES AND TRAINED ATTENDANTS**  
**Act 319 of 1909**

**338.351-338.362 Repealed. 1958, Act 36, Imd. Eff. Apr. 7, 1958;—1967, Act 149, Eff. Nov. 2, 1967.**

**PHYSICIAN ASSISTANTS**  
**Act 312 of 1972**

**338.371-338.379 Expired. 1972, Act 312, Eff. Jan. 2, 1977.**

**Compiler's note:** The expired sections were subsequently repealed by Act 420 of 1976.

**COUNTY NURSE**  
**Act 7 of 1925**

**338.381-338.385 Repealed. 1978, Act 368, Eff. Sept. 30, 1978.**

**TOWNSHIP NURSE**  
**Act 277 of 1921**

**338.391-338.393 Repealed. 1978, Act 368, Eff. Sept. 30, 1978.**

**PHARMACY**  
**Act 134 of 1885**

**338.401-338.434 Repealed. 1953, Act 138, Eff. Oct. 2, 1953;—1955, Act 198, Imd. Eff. June 17, 1955;—1962, Act 151, Eff. Mar. 28, 1963.**

**PHARMACIST'S CERTIFICATE**  
**Act 403 of 1913**

**338.461 Repealed. 1962, Act 151, Eff. Mar. 28, 1963.**



**PHARMACIES, DRUG STORES, AND APOTHECARY SHOPS**  
**Act 359 of 1927**

AN ACT to regulate the ownership of pharmacies, drug stores and apothecary shops, and to provide a penalty for the violation of the provisions of this act.

**History:** 1927, Act 359, Eff. Sept. 5, 1927.

*The People of the State of Michigan enact:*

**338.481 Ownership of pharmacy, drugstore, or apothecary shop; requirements; exceptions.**

Sec. 1. (1) A pharmacy, drugstore, or apothecary shop shall be owned by a pharmacist and a partnership or corporation shall not own a drugstore, pharmacy, or apothecary shop unless at least 25% of the interest in the partnership or the stock of the corporation is held by pharmacists. A corporation, organized and existing under the laws of this state, or another state, authorized to do business in this state and empowered by its charter to own and conduct a pharmacy, drugstore, or apothecary shop and which, at the time of passage of this act, owns and conducts a drugstore, pharmacy, or apothecary shop in this state may continue to own and conduct the drugstore, pharmacy, or apothecary shop and may establish and own additional pharmacies, drugstores, or apothecary shops pursuant to this act.

(2) A corporation which does not continue to own at least 1 pharmacy, drugstore, or apothecary shop theretofore owned by it, or ceases to be actively engaged in the practice of pharmacy in this state, shall not be permitted thereafter to own a drugstore, pharmacy, or apothecary shop.

(3) A person who is not a pharmacist and who at the time of the passage of this act owns a pharmacy, drugstore, or apothecary shop in this state, may continue to own and conduct the pharmacy, drugstore, or apothecary shop pursuant to existing laws and rules.

(4) The administrator, executor, or trustee of the estate of a deceased owner of a pharmacy, drugstore, or apothecary shop, or the widow, heirs, or next of kin of the deceased owner, may continue to own and conduct the pharmacy, drugstore, or apothecary shop pursuant to existing laws and rules.

(5) This act shall not apply to hospitals licensed by the department of public health pursuant to Act No. 368 of the Public Acts of 1978, as amended, being sections 333.1101 to 333.25211 of the Michigan Compiled Laws.

(6) This act shall not apply to a health maintenance organization licensed by the department of public health pursuant to Act No. 368 of the Public Acts of 1978, as amended.

(7) This act shall not apply to a pharmacy in an institution of higher education established by law having authority to grant a baccalaureate degree if the pharmacy is under the personal charge of a pharmacist.

**History:** 1927, Act 359, Eff. Sept. 5, 1927;—CL 1929, 6861;—CL 1948, 338.481;—Am. 1977, Act 62, Imd. Eff. July 13, 1977;—Am. 1980, Act 99, Imd. Eff. Apr. 17, 1980.

**338.482 Violation of act; penalty.**

Sec. 2. Any individual, firm or corporation violating the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction shall be subject to a fine of not less than 500 dollars and cost of prosecution.

**History:** 1927, Act 359, Eff. Sept. 5, 1927;—CL 1929, 6862;—CL 1948, 338.482.

**ACCOUNTANTS**  
**Act 353 of 1925**

**338.501-338.528 Repealed. 1967, Act 306, Eff. Nov. 2, 1967;—1976, Act 130, Eff. July 1, 1976.**

**ARCHITECTURE, PROFESSIONAL ENGINEERING, AND LAND SURVEYING**  
**Act 240 of 1937**

**338.551-338.576 Repealed. 1980, Act 299, Imd. Eff. Oct. 21, 1980.**

**SECTION, QUARTER SECTION, AND CENTER SECTION CORNERS**  
**Act 314 of 1941**

**338.591-338.595 Repealed. 1975, Act 313, Eff. Mar. 31, 1976.**

**BARBERS AND HAIRCUTTERS**  
**Act 382 of 1927**

**338.601-338.625 Repealed. 1968, Act 355, Eff. July 1, 1969.**

**BARBER SHOP PRACTICES, OPERATION, AND PRICES**  
**Act 309 of 1941**

**338.651-338.662 Repealed. 1997, Act 128, Imd. Eff. Nov. 5, 1997.**

**SUNDAY CLOSING OF BARBER SHOPS**  
**Act 148 of 1893**

**338.681-338.683 Repealed. 1996, Act 148, Imd. Eff. Mar. 25, 1996.**

**RESIDENTIAL BUILDINGS**  
**Act 311 of 1939**

**338.701-338.720 Repealed. 1965, Act 383, Imd. Eff. Aug. 18, 1965;—1966, Act 12, Eff. Sept. 1, 1966.**

**FORESTERS**  
**Act 78 of 1955**

**338.721-338.740 Repealed. 1980, Act 299, Imd. Eff. Oct. 21, 1980.**

**ACT CONCERNING COSMETOLOGY**  
**Act 176 of 1931**

**338.751-338.786 Repealed. 1976, Act 350, Imd. Eff. Dec. 21, 1976;—1980, Act 299, Imd. Eff. Oct. 21, 1980.**

**PRIVATE DETECTIVE AGENCIES**  
**Act 383 of 1927**

**338.801-338.813 Repealed. 1965, Act 285, Imd. Eff. July 22, 1965.**

**PROFESSIONAL INVESTIGATOR LICENSURE ACT**  
**Act 285 of 1965**

AN ACT to license and regulate professional investigators; to provide for certain powers and duties for certain state agencies and local officials; to provide for the imposition for certain fees; to protect the general public against unauthorized, unlicensed and unethical operations by professional investigators; to provide for immunity for certain persons under certain circumstances; to provide for penalties and remedies; and to repeal acts and parts of acts.

**History:** 1965, Act 285, Imd. Eff. July 22, 1965;—Am. 2002, Act 474, Eff. Oct. 1, 2002;—Am. 2008, Act 146, Imd. Eff. May 28, 2008.

*The People of the State of Michigan enact:*

**338.821 Short title.**

Sec. 1. This act shall be known and may be cited as the "professional investigator licensure act".

**History:** 1965, Act 285, Imd. Eff. July 22, 1965;—Am. 2002, Act 474, Eff. Oct. 1, 2002;—Am. 2008, Act 146, Imd. Eff. May 28, 2008.

**338.822 Definitions.**

Sec. 2. As used in this act:

(a) "Certified public accountant" means a person licensed as a certified public accountant under article 7 of the occupational code, 1980 PA 299, MCL 339.720 to 339.736.

(b) "Computer forensics" means the collection, investigation, analysis, and scientific examination of data held on, or retrieved from, computers, computer networks, computer storage media, electronic devices, electronic storage media, or electronic networks, or any combination thereof.

(c) "Department" means the Michigan department of labor and economic growth.

(d) "Insurance adjuster" means a person other than a professional investigator who, for a consideration, engages in the activities described in subdivision (e) in the course of adjusting or otherwise participating in the disposal of claims under or in connection with a policy of insurance. Insurance adjuster includes any of the following:

(i) A person who is employed on a salary basis by an insurance company.

(ii) A person, firm, partnership, company, limited liability company, or corporation who acts for insurance companies solely in the capacity of an independent claim adjuster while performing within that capacity.

(iii) A person, firm, partnership, company, limited liability company, or corporation engaged in the business of public adjuster acting for claimants in securing adjustments of claims against insurance companies and who does not perform investigative services including, but not limited to, surveillance activities.

(e) "Investigation business" means a business that, for a fee, reward, or other consideration, engages in business or accepts employment to furnish, or subcontracts or agrees to make, or makes an investigation for the purpose of obtaining information with reference to any of the following:

(i) Crimes or wrongs done or threatened against the United States or a state or territory of the United States, or any other person or legal entity.

(ii) The identity, habits, conduct, business, occupation, honesty, integrity, credibility, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affiliations, associations, transactions, acts, reputation, or character of a person.

(iii) The location, disposition, or recovery of lost or stolen property.

(iv) The cause or responsibility for fires, libels, losses, accidents, or damage or injury to persons or property.

(v) Securing evidence to be used before a court, board, officer, or investigating committee.

(vi) The prevention, detection, and removal of surreptitiously installed devices designed for eavesdropping or observation, or both.

(vii) The electronic tracking of the location of an individual or motor vehicle for purposes of detection or investigation.

(viii) Computer forensics to be used as evidence before a court, board, officer, or investigating committee.

(f) "Licensee" means a person licensed under this act.

(g) "Professional engineer" means a person licensed under article 20 of the occupational code, 1980 PA 299, MCL 339.2001 to 339.2014, as a professional engineer.

(h) "Professional investigator" means a person, other than an insurance adjuster who is on salary and employed by an insurance company, who for a fee, reward, or other consideration engages in the investigation

business.

**History:** 1965, Act 285, Imd. Eff. July 22, 1965;—Am. 1967, Act 164, Eff. Nov. 2, 1967;—Am. 1978, Act 311, Imd. Eff. July 10, 1978;—Am. 2002, Act 474, Eff. Oct. 1, 2002;—Am. 2008, Act 146, Imd. Eff. May 28, 2008.

### **338.823 License required; investigation of prohibited activities; civil or criminal action; violation; penalty.**

Sec. 3. (1) A person, firm, partnership, company, limited liability company, or corporation shall not engage in the business of professional investigator for hire, fee, or reward, and shall not advertise his or her business to be that of professional investigator or of a professional investigator agency without first obtaining a license from the department. A person, firm, partnership, company, limited liability company, or corporation shall not engage in the business of furnishing or supplying, for hire and reward, information as to the personal character of any person or firm, or as to the character or kind of business and occupation of any person, firm, partnership, company, limited liability company, or corporation and shall not own, conduct, or maintain a bureau or agency for the purposes described in this subsection except as to the financial rating of persons, firms, partnerships, companies, limited liability companies, or corporations without having first obtained a license as a professional investigator from the department.

(2) The department, the attorney general, the Michigan state police, or a local law enforcement agency, on its own initiative or at the request of any other person or legal entity, may investigate allegations of a person or legal entity engaging in activities regulated under this act without being appropriately licensed or exempt from licensure under this act. The entity conducting the investigation shall report its findings to the attorney general and county prosecuting attorney having jurisdiction in the location within which the alleged violator is engaged in business. The attorney general or county prosecuting attorney may bring an appropriate civil or criminal action in a court of competent jurisdiction to enjoin any person or legal entity that has engaged or is about to engage in any activity regulated by this act without being appropriately licensed or exempt from licensure under this act. Such an injunction may be issued without proof of actual damage sustained by any person or legal entity. Issuance of an injunction shall not prevent criminal prosecution of a violator. In addition to issuing the injunction, the court may impose a civil violation fine not to exceed \$25,000.00. A person or other legal entity who reports to the department, a local law enforcement agency, a county prosecuting attorney, or the attorney general regarding an allegation of unlicensed activity is immune from tort liability for making the report.

(3) A person violating this section is guilty of a felony punishable by imprisonment for not more than 4 years or by a penal fine of not more than \$5,000.00, or both.

**History:** 1965, Act 285, Imd. Eff. July 22, 1965;—Am. 1974, Act 114, Eff. July 1, 1974;—Am. 2002, Act 474, Eff. Oct. 1, 2002;—Am. 2008, Act 146, Imd. Eff. May 28, 2008.

### **338.824 Exemptions from act.**

Sec. 4. This act does not apply to any of the following:

(a) A person employed exclusively and regularly by an employer in connection with the affairs of the employer only, if there exists a bona fide employer-employee relationship for which the employee is reimbursed on a salary basis.

(b) An officer or employee of the United States, this state, or a political subdivision of this state while that officer or employee is engaged in the performance of his or her official duties except that such officer or employee does not include a professional investigator hired or employed under contract by the United States, this state, or a political subdivision of this state.

(c) The business of obtaining and furnishing information as to the financial standing, rating, and credit responsibility of persons or as to the personal habits and financial responsibility of applicants for insurance, indemnity bonds, or commercial credit.

(d) A charitable philanthropic society or association duly incorporated under the laws of this state that is organized and maintained for the public good and not for private profit.

(e) An attorney admitted to practice in this state in performing his or her duties as an attorney at law.

(f) A collection agency or finance company licensed to do business under the laws of this state or any employee of a collection agency or finance company while acting within the scope of his or her employment when making an investigation incidental to the business of the agency, including an investigation of the location of the debtor or his or her assets and property in which the client has an interest or upon which the client has a lien.

(g) An insurance adjuster who is employed on a salary basis by an insurance company or a person, firm, partnership, company, limited liability company, or corporation that acts for an insurance company solely in the capacity of claim adjuster.

(h) A person, firm, partnership, company, limited liability company, or corporation engaged in the business of public adjuster acting for claimants in securing adjustments of claims against insurance companies and who does not perform investigative services, including, but not limited to, surveillance activities.

(i) A professional engineer acting within the scope of his or her licensed professional practice who does not perform investigative services, including, but not limited to, surveillance activities or other activities outside of the scope of his or her licensed professional practice.

(j) A certified public accountant currently licensed, registered, or certified by a regulatory agency of this or any other state or a public accounting firm currently licensed, registered, or certified by a regulatory agency of this or any other state, including the employees of the certified public accountant or public accounting firm acting within the scope of the individual's or the public accounting firm's professional practice.

(k) A bail agent authorized under section 167b of the Michigan penal code, 1931 PA 328, MCL 750.167b, while performing his or her duties as a bail agent.

**History:** 1965, Act 285, Imd. Eff. July 22, 1965;—Am. 2002, Act 474, Eff. Oct. 1, 2002;—Am. 2008, Act 146, Imd. Eff. May 28, 2008;—Am. 2010, Act 359, Imd. Eff. Dec. 22, 2010.

### **338.825 License; issuance, duration.**

Sec. 5. (1) The department, upon application and after making a determination that the applicant is qualified, shall issue the applicant a license to conduct business as a professional investigator for a period of 3 years from date of issuance.

(2) Upon the issuance of a license under this act to conduct business as a professional investigator, the applicant is not required to obtain any other license from any municipality or political subdivision of this state.

**History:** 1965, Act 285, Imd. Eff. July 22, 1965;—Am. 2002, Act 474, Eff. Oct. 1, 2002;—Am. 2008, Act 146, Imd. Eff. May 28, 2008.

### **338.826 License; qualifications; reciprocal agreements.**

Sec. 6. (1) The department shall issue a license to conduct business as a professional investigator if satisfied that the applicant is a person, or if a firm, partnership, company, limited liability company, or corporation, the sole or principal license holder is a person who meets all of the following qualifications:

- (a) Is a citizen of the United States.
- (b) Is not less than 25 years of age.
- (c) Has a high school education or its equivalent.
- (d) Has not been convicted of a felony, or a misdemeanor involving any of the following:
  - (i) Dishonesty or fraud.
  - (ii) Unauthorized divulging or selling of information or evidence.
  - (iii) Impersonation of a law enforcement officer or employee of the United States or a state, or a political subdivision of the United States or a state.
  - (iv) Illegally using, carrying, or possessing a dangerous weapon.
  - (v) Two or more alcohol related offenses.
  - (vi) Controlled substances under the public health code, 1978 PA 368, MCL 333.1101 to 333.25211.
  - (vii) An assault.
- (e) Has not been dishonorably discharged from a branch of the United States military service.
- (f) For a period of not less than 3 years has been or is any of the following on a full-time basis:
  - (i) Lawfully engaged in the professional investigation business as a licensee, registrant, or investigative employee in another state.
  - (ii) Lawfully engaged in the investigation business as an investigative employee of the holder of a license to conduct a professional investigation agency.
  - (iii) An investigator, detective, special agent, intelligence specialist, parole agent, probation officer, or certified police officer employed by any government executive, military, judicial, or legislative agency, or other public authority engaged in investigative or intelligence activities. This subdivision does not include individuals employed by educational or charitable institutions who are solely engaged in academic, consulting, educational, instructional, or research activities. In the case of the experience requirement under this subparagraph for an applicant demonstrating experience as a probation officer or parole agent, the department shall consider any application filed on or after January 1, 2005 for eligibility regarding that experience.

(iv) A graduate of an accredited institution of higher education with a baccalaureate or postgraduate degree in the field of police administration, security management, investigation, law, criminal justice, or computer forensics or other computer forensic industry certificated study that is acceptable to the department.

(v) Lawfully engaged in the investigation business as a full-time proprietary or in-house investigator employed by a business or attorney, or as an investigative reporter employed by a recognized media outlet, acceptable to the department. This subdivision does not include individuals employed by educational or charitable institutions who are solely engaged in academic, consulting, educational, instructional, or research activities.

(g) Has posted with the department a bond or insurance policy provided for in this act.

(2) In the case of a person, firm, partnership, company, limited liability company, or corporation now doing or seeking to do business in this state, the manager shall comply with the qualifications of this section.

(3) Beginning July 1, 2010, a law enforcement officer, as that term is defined in section 2 of the commission of law enforcement standards act, 1965 PA 203, MCL 28.602, shall not be issued a new or renewal license and shall not be employed and working in an investigative capacity by, or authorized to operate in a capacity as, a professional investigator unless the law enforcement officer obtains and produces, in a manner acceptable to the department, any 1 of the following:

(a) Written permission to act as a professional investigator from the current chief of police, county sheriff, or other official having executive authority and responsibility over the law enforcement matters in that jurisdiction if the law enforcement officer does not work under the authority of a chief of police or county sheriff.

(b) A copy of the law enforcement officer's jurisdiction's published policies and procedures allowing off-duty employment, which policies and procedures include the prohibition of the off-duty use of investigative tools or equipment, or both, provided exclusively for law enforcement and indicate that the off-duty employment as a professional investigator is not considered in conflict with employment as a law enforcement officer.

(c) A copy of the collective bargaining agreement of the law enforcement officer's jurisdiction.

(4) This act does not prevent a licensee from acting as a professional investigator outside of this state to the extent allowed by that other state under the laws of that state.

(5) The department may enter into reciprocal agreements with other states that have professional investigator qualification laws to allow a professional investigator license or registration to be used by that licensee or registrant within the jurisdiction of either this state or another state. The reciprocal agreement shall be limited to only allow professional investigators to continue investigations that originate in the investigator's home state and that require investigation in another state. The department may enter into a reciprocal agreement if the other state meets all of the following conditions:

(a) Issues a professional investigator identification card with an expiration date printed on the card.

(b) Is available to verify the license or registration status for law enforcement purposes.

(c) Has disqualification, suspension, and revocation standards for licenses and registrations.

(d) Requires the applicant for a license or registration as a professional investigator to submit to a criminal history records check pursuant to applicable state and federal law.

(6) Each reciprocal agreement shall, at a minimum, include the following provisions:

(a) A requirement that the professional investigator possess a professional investigator license or registration in good standing from his or her home state.

(b) A requirement that the professional investigator shall be time-limited to a maximum of 30 days per case while conducting an investigation in this state, or a lesser amount of time if required to comply with the reciprocity statutes or regulations of the other state.

(c) A requirement that the professional investigator from the other state not solicit any business in this state while conducting investigations in this state.

**History:** 1965, Act 285, Imd. Eff. July 22, 1965;—Am. 1967, Act 164, Eff. Nov. 2, 1967;—Am. 1978, Act 311, Imd. Eff. July 10, 1978;—Am. 2002, Act 474, Eff. Oct. 1, 2002;—Am. 2008, Act 146, Imd. Eff. May 28, 2008.

### **338.827 Application for license; notarized statement as to qualifications; investigation of applicant.**

Sec. 7. (1) The department shall prepare a standard uniform application. The applicant shall obtain notarized reference statements from at least 5 reputable citizens who swear that they have known the applicant and his or her qualifications for a period of at least 5 years and believe that the applicant is honest, of good character, and competent. The individual providing the reference shall not be related or connected to the person so certifying by blood or marriage.

(2) Upon receipt of the application, application processing fee, and license fee as described in section 9, the department shall investigate as to the applicant's qualifications for licensure.

**History:** 1965, Act 285, Imd. Eff. July 22, 1965;—Am. 2002, Act 474, Eff. Oct. 1, 2002;—Am. 2008, Act 146, Imd. Eff. May 28, 2008.



### **338.828 Application for license by corporation; contents; copy of incorporation certificate.**

Sec. 8. If the applicant is a corporation, the application shall be signed and verified by the president, secretary and treasurer thereof, and shall specify the name of the corporation, the date and place of its incorporation, the location of its principal place of business, and the name of the city, town or village, stating the street and number, and such other description as will indicate the location of the bureau, agency, subagency, office or branch office for which the license is desired, and shall be accompanied by a duly certified copy of a certificate of incorporation.

**History:** 1965, Act 285, Imd. Eff. July 22, 1965;—Am. 2008, Act 146, Imd. Eff. May 28, 2008.

### **338.829 License; conditions of issuance; fee; duration; suspension or revocation; bonds; branch office; filing completed application; issuance of license within certain time period; report; “completed application” defined.**

Sec. 9. (1) The department, when satisfied of the competency and integrity of the applicant, or if the applicant is a firm, partnership, company, limited liability company, or corporation, of its individual members or officers, shall issue to the applicant a license upon the applicant's paying to the department an application processing fee of \$150.00 and an initial license fee of \$600.00. The applicant shall execute, deliver, and file with the department a bond in the sum of \$10,000.00, conditioned for the faithful and honest conduct of the business by the applicant, which bond shall be approved by the department. The license is valid for 3 years but is subject to suspension or revocation at all times by the department for cause shown. The bonds shall be taken in the name of the people of the state, and any person injured by the willful, malicious, and wrongful act of the principal may bring an action on the bond or insurance in his or her own name to recover damages suffered by reason of such willful, malicious, and wrongful act. In lieu of a bond, the applicant may furnish a policy of insurance issued by an insurer authorized to do business in this state naming the licensee and the state as co-insured in the amount of \$10,000.00 for property damages, \$100,000.00 for injury or death of 1 person, and \$200,000.00 for injuries to or deaths of more than 1 person arising out of the operation of the licensed activity. The license shall be in a form to be prescribed by the department and shall specify the full name of the applicant, the location of the principal office or place of business and the location of the bureau, agency, subagency, office or branch office for which the license is issued, the expiration date, and the name of the person filing the statement required by this act upon which the license is issued.

(2) A licensee desiring to open a branch office or subagency shall receive a license for that branch or subagency upon payment to the department of an additional fee of \$125.00 for each additional license. The additional license shall be posted in a conspicuous place in the branch office or subagency and expires on the date of the initial license.

(3) If the license is suspended or revoked for any cause, the department shall not refund the license or application processing fee or any part of the license or application processing fee.

(4) Beginning the effective date of the amendatory act that added this subsection, the department shall issue an initial or renewal license not later than 90 days after the applicant files a completed application. Receipt of the application is considered the date the application is received by any agency or department of the state of Michigan. If the application is considered incomplete by the department, the department shall notify the applicant in writing, or make information electronically available, within 30 days after receipt of the incomplete application, describing the deficiency and requesting the additional information. The 90-day period is tolled upon notification by the department of a deficiency until the date the requested information is received by the department. The determination of the completeness of an application does not operate as an approval of the application for the license and does not confer eligibility of an applicant determined otherwise ineligible for issuance of a license.

(5) If the department fails to issue or deny a license within the time required by this section, the department shall return the license fee and shall reduce the license fee for the applicant's next renewal application, if any, by 15%. The failure to issue a license within the time required under this section does not allow the department to otherwise delay the processing of the application, and that application, upon completion, shall be placed in sequence with other completed applications received at that same time. The department shall not discriminate against an applicant in the processing of the application based upon the fact that the license fee was refunded or discounted under this subsection.

(6) Beginning October 1, 2005, the director of the department shall submit a report by December 1 of each year to the standing committees and appropriations subcommittees of the senate and house of representatives concerned with occupational issues. The director shall include all of the following information in the report concerning the preceding fiscal year:

(a) The number of initial and renewal applications the department received and completed within the

90-day time period described in subsection (4).

(b) The number of applications denied.

(c) The number of applicants not issued a license within the 90-day time period and the amount of money returned to licensees and registrants under subsection (5).

(7) As used in this section and section 26, "completed application" means an application complete on its face and submitted with any applicable licensing fees as well as any other information, records, approval, security, or similar item required by law or rule from a local unit of government, a federal agency, or a private entity but not from another department or agency of the state of Michigan.

**History:** 1965, Act 285, Imd. Eff. July 22, 1965;—Am. 2002, Act 474, Eff. Oct. 1, 2002;—Am. 2004, Act 260, Imd. Eff. July 23, 2004.

### **338.830 License; suspension or revocation; grounds; additional sanctions; surrendering license and identification card; noncompliance as misdemeanor.**

Sec. 10. (1) The department may suspend or revoke a license issued under this act if the department determines that the licensee or licensee's manager, if an individual, or if the licensee is a person other than an individual, that an officer, director, partner, or its manager, has done any of the following:

(a) Made false statements or given false information in connection with an application for a license or a renewal or reinstatement of a license.

(b) Violated this act or any rule promulgated under this act.

(c) Been convicted of a felony or misdemeanor involving dishonesty or fraud, unauthorized divulging or selling of information or evidence.

(d) Been convicted of impersonation of a law enforcement officer or employee of the United States or a state, or a political subdivision of the United States or a state.

(e) Been convicted of illegally using, carrying, or possessing a dangerous weapon.

(f) In the case of a law enforcement officer issued a license under the conditions contained in section 6(3), violated the policies and procedures governing off-duty employment.

(2) In addition to the suspension or revocation provisions available to the department under subsection (1), the department may do 1 or more of the following regarding a licensee or a licensee's manager, if an individual, or if the licensee is a person other than an individual, an officer, director, partner, member, or its manager, who violates this act or a rule or order promulgated or issued under this act:

(a) Place a limitation on a license.

(b) Deny a renewal of a license.

(c) Issue an order of censure.

(d) Issue an order of probation.

(e) Impose a requirement that restitution be made.

(3) Upon notification from the department of the suspension or revocation of the license, the licensee, within 24 hours, shall surrender to the department the license and his or her identification card. Failure to surrender the license in compliance with this subsection is a misdemeanor.

**History:** 1965, Act 285, Imd. Eff. July 22, 1965;—Am. 1978, Act 311, Imd. Eff. July 10, 1978;—Am. 2002, Act 474, Eff. Oct. 1, 2002;—Am. 2008, Act 146, Imd. Eff. May 28, 2008.

### **338.831 License fee; refund; conditions.**

Sec. 11. The department shall not refund a license fee unless a showing is made of mistake, inadvertence, error in the collection of the fee, or noncompliance with the time periods described in section 9(4).

**History:** 1965, Act 285, Imd. Eff. July 22, 1965;—Am. 2002, Act 474, Eff. Oct. 1, 2002;—Am. 2004, Act 260, Imd. Eff. July 23, 2004.

### **338.832 License; posting.**

Sec. 12. Upon receipt of a license from the department, the licensee shall post it in a conspicuous place in his or her office.

**History:** 1965, Act 285, Imd. Eff. July 22, 1965;—Am. 2002, Act 474, Eff. Oct. 1, 2002.

### **338.833 Reporting name or location change in agency; new license.**

Sec. 13. Any change in the name or location of the agency or of a branch office or subagency shall be reported to the department at least 30 days before the change becomes effective. Upon receipt of the notice of change of name or location, the department shall prepare and forward a license showing the change and the licensee shall return the old license within 3 business days after the change.

**History:** 1965, Act 285, Imd. Eff. July 22, 1965;—Am. 2002, Act 474, Eff. Oct. 1, 2002.



### **338.834 Identification card; issuance; form and contents; maintenance, custody, and control; duplicates.**

Sec. 14. (1) Upon issuing a license, the department shall also issue an identification card to the principal license holder or, if the agency is a partnership, to each partner or, if the license holder is a corporation or limited liability company, to each resident officer, manager, or member.

(2) The identification card issued under subsection (1) shall be in such form and contain such information as may be prescribed by the department and is recallable by the department for the same reasons as the license.

(3) The department shall only issue 1 identification card for each person entitled to receive it. The licensee is responsible for the maintenance, custody, and control of the identification card and shall not lease, loan, sell, or otherwise permit unauthorized persons or employees to use it. This subsection does not prevent each agency from issuing its own identification cards, if approved as to form and content by the department, to its respective employees. The individual identification card shall not bear the seal of the state or the designation of professional investigator, but the identification card may designate the employee as an investigator or operator and may state that the person is employed by a licensee of the department and the state of Michigan.

(4) Upon proper application and for sufficient reasons shown, the department may issue duplicates of the original license or identification card.

**History:** 1965, Act 285, Imd. Eff. July 22, 1965;—Am. 2002, Act 474, Eff. Oct. 1, 2002;—Am. 2008, Act 146, Imd. Eff. May 28, 2008.

### **338.835 Nonassignability of license.**

Sec. 15. A license issued under the provisions of this act is not assignable, and is personal to such licensee.

**History:** 1965, Act 285, Imd. Eff. July 22, 1965.

### **338.836 Display of unauthorized badge, shield, identification card, or license; violation; penalties.**

Sec. 16. (1) A person shall not possess or display a badge or shield that purports to indicate that the holder is a private detective, private investigator, or professional investigator.

(2) A licensee may request authorization to provide employee identification cards only upon the express authorization of the department as to format and content.

(3) A person shall not display any badge, shield, identification card, or license that might mislead the public into thinking that the holder is a licensed professional investigator.

(4) A person who violates this section is guilty of a misdemeanor and any unauthorized badge, shield, identification card, or license shall be confiscated by any law enforcement officer of the state. Each day the violation continues shall constitute a separate offense.

**History:** 1965, Act 285, Imd. Eff. July 22, 1965;—Am. 2002, Act 474, Eff. Oct. 1, 2002;—Am. 2008, Act 146, Imd. Eff. May 28, 2008.

### **338.837 Licensees; employment of assistants; records; false statements; fingerprints.**

Sec. 17. (1) A licensee may employ as many persons as considered necessary to assist in his or her work of professional investigator and in the conduct of the business. At all times during the employment, the licensee shall have direct involvement in the day-to-day activities and is accountable for the good conduct in the business of each person so employed.

(2) A licensee shall keep adequate and complete records of all persons he or she employs, which records shall be made available to the department upon request and to police authorities if the police authorities offer legitimate proof for the request in connection with a specific need.

(3) If a licensee falsely states or represents that a person is or has been in his or her employ, the false statement or representation shall be sufficient cause for the suspension or revocation of the license. Any person falsely stating or representing that he or she is or has been a professional investigator or employed by a professional investigator agency is guilty of a misdemeanor.

(4) A licensee shall not knowingly employ any person who does not meet the requirements of this act.

(5) The licensee shall cause fingerprints to be taken of all prospective employees, which fingerprints shall be submitted to the department and the federal bureau of investigation for processing and approval.

(6) The fingerprints required to be taken under subsection (5) may be taken by a law enforcement agency or any other person determined by the department to be qualified to take fingerprints. The licensee shall submit a fingerprint processing fee to the department in accordance with section 3 of 1935 PA 120, MCL 28.273, as well as any costs imposed by the federal bureau of investigation.

**History:** 1965, Act 285, Imd. Eff. July 22, 1965;—Am. 1967, Act 164, Eff. Nov. 2, 1967;—Am. 2002, Act 474, Eff. Oct. 1, 2002;—Am. 2008, Act 146, Imd. Eff. May 28, 2008.

### **338.838 Hiring of person convicted of certain felonies or misdemeanors prohibited; refusal to surrender license or identification card.**

Sec. 18. (1) A licensee shall not knowingly employ any person who has been convicted of a felony, or convicted of a misdemeanor within the preceding 8 years involving any of the following:

- (a) Dishonesty or fraud.
- (b) Unauthorized divulging or selling of information or evidence.
- (c) Impersonation of a law enforcement officer or employee of the United States, this state, or a political subdivision of this state.
- (d) Illegally using, carrying, or possessing a dangerous weapon.
- (e) Two or more alcohol related offenses.
- (f) Controlled substances under the public health code, 1978 PA 368, MCL 333.1101 to 333.25211.
- (g) An assault.

(2) Any employee or operator who, upon demand, fails to surrender to the licensee his or her identification card and any other property issued to him or her for use in connection with his or her employer's business is guilty of a misdemeanor.

**History:** 1965, Act 285, Imd. Eff. July 22, 1965;—Am. 2002, Act 474, Eff. Oct. 1, 2002.

### **338.839 Carrying deadly weapon; license required.**

Sec. 19. Any person licensed as a professional investigator, or in the employ of a professional investigator agency, is not authorized to carry a deadly weapon unless he is so licensed in accordance with the present laws of this state.

**History:** 1965, Act 285, Imd. Eff. July 22, 1965;—Am. 2008, Act 146, Imd. Eff. May 28, 2008.

### **338.840 Divulging of information; willful sale of or furnishing false information; penalty; privileged communications; notice and hearing.**

Sec. 20. (1) Any person who is or has been an employee of a licensee shall not divulge to anyone other than his or her employer or former employer, or as the employer shall direct, except as he or she may be required by law, any information acquired by him or her during his or her employment in respect to any of the work to which he or she shall have been assigned by the employer. Any employee violating the provisions of this section and any employee who willfully makes a false report to his or her employer in respect to any work is guilty of a misdemeanor.

(2) Any principal, manager, or employee of a licensee who willfully furnishes false information to clients, or who willfully sells, divulges, or otherwise discloses to other than clients, except as may be required by law, any information acquired during employment by the client is guilty of a misdemeanor and is subject to summary suspension of license and revocation of license upon satisfactory proof of the offense to the department. Any communications, oral or written, furnished by a professional or client to a licensee, or any information secured in connection with an assignment for a client, is considered privileged with the same authority and dignity as are other privileged communications recognized by the courts of this state.

(3) Suspension, revocation, denial, or other action against a licensee or applicant for a license as described in section 10 shall be accompanied by notice and an opportunity for a hearing under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

**History:** 1965, Act 285, Imd. Eff. July 22, 1965;—Am. 2002, Act 474, Eff. Oct. 1, 2002;—Am. 2008, Act 146, Imd. Eff. May 28, 2008.

### **338.841 Violation of act; report of conviction by prosecuting attorney.**

Sec. 21. The prosecuting attorney of the county in which any conviction for a violation of any provision of this act shall, within 10 days thereafter, make and file with the department a report showing the date of the conviction, the name of the person convicted, and the nature of the charge.

**History:** 1965, Act 285, Imd. Eff. July 22, 1965;—Am. 2002, Act 474, Eff. Oct. 1, 2002.

### **338.842 Advertising; contents; discontinuing misleading advertising; notice.**

Sec. 22. (1) An advertisement by a licensee soliciting or advertising for business shall contain his or her name and address as they appear in the records of the department.

(2) A licensee shall, on notice from the department, discontinue any advertising or the use of any advertisement, seal, or card, that the department determines to be misleading to the public. Failure to comply with such an order is cause for suspension or revocation of the license.

(3) Unless licensed under this act, a person shall not advertise his or her business to be that of a professional investigator regardless of the name or title actually used.

**History:** 1965, Act 285, Imd. Eff. July 22, 1965;—Am. 2002, Act 474, Eff. Oct. 1, 2002;—Am. 2008, Act 146, Imd. Eff. May 28, 2008.

#### **338.843 Trade names; approval by department.**

Sec. 23. A licensee shall not use any designation or trade name which has not been first approved by the department and shall not use any designation or trade name that implies any association with any municipal, county, township, or state government or the federal government, or any agency thereof.

**History:** 1965, Act 285, Imd. Eff. July 22, 1965;—Am. 2002, Act 474, Eff. Oct. 1, 2002.

#### **338.844 Record of business transaction and reports; retention.**

Sec. 24. (1) Each person, partnership, firm, company, limited liability company, or corporation licensed and operating under this act shall make a complete written record of the business transactions and reports made in connection with the operation of the agency.

(2) A professional investigator agency that receives or generates a written or electronic report shall keep the report on file in the office of the professional investigator for at least 2 years unless the file is returned to the client or agent.

**History:** 1965, Act 285, Imd. Eff. July 22, 1965;—Am. 2002, Act 474, Eff. Oct. 1, 2002;—Am. 2008, Act 146, Imd. Eff. May 28, 2008.

#### **338.845 Investigation of applicants; complaints; subpoenas; fees; failure to obey; penalty; testimony under oath.**

Sec. 25. (1) For the purpose of investigating the character, competency, and integrity of the applicants, or for the purpose of investigating complaints made against the licensee, the director of the department may issue subpoenas and compel the attendance of witnesses. All subpoenas shall be issued under the hand of the director of the department and upon service the witness shall be tendered the fees to which he or she would be entitled to receive if subpoenaed in a court of law.

(2) A person duly subpoenaed who fails to obey the subpoena or, without cause, refuses to be examined or to answer any legal or pertinent questions as to the character, qualifications, or alleged misdeeds of the applicant or licensee is guilty of a misdemeanor.

(3) The testimony of such witnesses shall be under oath, which a designee of the director of the department may administer. Willful false swearing in any such proceeding is considered perjury.

**History:** 1965, Act 285, Imd. Eff. July 22, 1965;—Am. 2002, Act 474, Eff. Oct. 1, 2002.

#### **338.846 License; renewal; fee; bond.**

Sec. 26. (1) A license granted under this act may be renewed upon application and the payment of a renewal fee of \$300.00, unless reduced under section 9(5), and filing of a renewal surety bond or liability insurance policy in the amount equivalent to that specified in section 9.

(2) A renewal license shall be dated as of the expiration date of the previously existing license. For the renewal of a license, the licensee shall submit an application in such form as prescribed by the department. Upon receipt of a completed application, payment of the renewal fee subject to section 9(5), and proof acceptable to the department of bond or insurance, the department shall renew a license. The department may defer the renewal if there are uninvestigated complaints then outstanding against the licensee or if there is a criminal complaint then pending against the licensee.

**History:** 1965, Act 285, Imd. Eff. July 22, 1965;—Am. 2002, Act 474, Eff. Oct. 1, 2002;—Am. 2004, Act 260, Imd. Eff. July 23, 2004.

#### **338.847 Death of licensee; carrying on business; notice to department; sale of business.**

Sec. 27. (1) Upon the death of a licensee, the business of the decedent may be carried on for a period of 90 days by any of the following:

(a) In the case of an individual licensee, the surviving spouse, or if there is none, the personal representative of the estate of the decedent.

(b) In the case of a partner, the surviving partners.

(c) In the case of an officer of a firm, company, association, limited liability company, or corporation, the officers.

(2) Within 10 days following the death of a licensee, the department shall be notified by a person described in subsection (1) in writing. The notification shall state the name of the person legally authorized to carry on the business of the deceased.

(3) Upon the authorization of the department, the business may be carried on for a further period of time when necessary to complete any investigation or assist in any litigation pending at the death of the decedent.

(4) This section does not authorize the solicitation or acceptance of any business after the death of the decedent except as otherwise provided by this act.

(5) This section shall not be construed to restrict the sale of a professional investigator business if the vendee qualifies for a license under the provisions of this act.

**History:** 1965, Act 285, Imd. Eff. July 22, 1965;—Am. 2002, Act 474, Eff. Oct. 1, 2002;—Am. 2008, Act 146, Imd. Eff. May 28, 2008.

### **338.848 Employment of agents; rules.**

Sec. 28. (1) The department may employ such agents as are necessary to carry out and to enforce this act.

(2) The department may promulgate rules to enforce and administer this act pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

**History:** 1965, Act 285, Imd. Eff. July 22, 1965;—Am. 2002, Act 474, Eff. Oct. 1, 2002.

### **338.849 Application of act as to license applications and renewals.**

Sec. 29. The requirements of this act as to license applications shall apply to all professional investigators, except those who already have been granted a license under prior laws of this state. The requirements as to renewal of license certificates shall apply to all professional investigators licensed under this act or any prior law of this state.

**History:** 1965, Act 285, Imd. Eff. July 22, 1965;—Am. 2008, Act 146, Imd. Eff. May 28, 2008.

### **338.850 Repeals.**

Sec. 30. Act No. 383 of the Public Acts of 1927, as amended, being sections 338.801 to 338.813 of the Compiled Laws of 1948, is repealed.

**History:** 1965, Act 285, Imd. Eff. July 22, 1965.

### **338.851 Violation; penalty.**

Sec. 31. A licensee, manager, or employee of a licensee who violates this act or a rule promulgated under this act is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or by a fine of not more than \$500.00, or both.

**History:** Add. 1974, Act 114, Eff. July 1, 1974;—Am. 2002, Act 474, Eff. Oct. 1, 2002.

**Compiler's note:** Former MCL 338.851, deriving from Act 229 of 1939 and pertaining to a state board of embalmers and funeral directors, was repealed by Act 268 of 1949.

## **THE EMBALMERS' AND FUNERAL DIRECTORS' ACT Act 229 of 1939**

**338.851a-338.860 Repealed. 1949, Act 268, Eff. Sept. 23, 1949.**

## **MORTUARY SCIENCE Act 268 of 1949**

**338.861-338.875 Repealed. 1980, Act 299, Imd. Eff. Oct. 21, 1980.**

## ELECTRICAL ADMINISTRATIVE ACT Act 217 of 1956

AN ACT to safeguard persons and property; to provide for licensing and regulation of electricians and electrical contractors concerning the construction, alteration, installation of electrical wiring and equipment and for the inspection of electrical wiring; to create an electrical administrative board; to create certain committees for certain purposes; to provide certain powers and duties for certain departments; to provide for the assessment of certain fees and for the promulgation of rules; and to prescribe penalties for violations of this act.

**History:** 1956, Act 217, Eff. Aug. 11, 1956;—Am. 1960, Act 94, Eff. Aug. 17, 1960;—Am. 1990, Act 246, Eff. Mar. 28, 1991.

*The People of the State of Michigan enact:*

### **338.881 Definitions.**

Sec. 1. (1) For purposes of this act, the words defined in this section, section 1a, and section 1b have the meanings ascribed to them in those sections.

(2) "Electrical wiring" means all wiring, generating equipment, fixtures, appliances, and appurtenances in connection with the generation, distribution, and utilization of electrical energy, within or on a building, residence, structure, or properties, and including service entrance wiring as defined by the code.

(3) "Electrical contractor" means a person, firm, or corporation engaged in the business of erecting, installing, altering, repairing, servicing, or maintaining electrical wiring, devices, appliances, or equipment.

(4) "Master electrician" means a person having the necessary qualifications, training, experience, and technical knowledge to supervise the installation of electrical wiring and equipment in accordance with the standard rules and regulations governing that work.

(5) "Electrical journeyman" means a person other than an electrical contractor who, as his or her principal occupation, is engaged in the practical installation or alteration of electric wiring. An electrical contractor or master electrician may also be an electrical journeyman.

(6) "Apprentice electrician" means an individual other than an electrical contractor, master electrician, or electrical journeyman, who is engaged in learning about and assisting in the installation or alteration of electrical wiring and equipment under the direct personal supervision of an electrical journeyman or master electrician.

(7) "Jobsite" means the immediate work area within the property lines of a single construction project, alteration project, or maintenance project where electrical construction or alteration of electrical wiring is in progress.

(8) "Municipality" means a city, village, or township.

(9) "Minor repair work" means electrical wiring not in excess of a valuation of \$100.00.

(10) "Stille-DeRossett-Hale single state construction code act" means 1972 PA 230, MCL 125.1501 to 125.1531.

(11) "Code" means the state construction code provided for in section 4 of the Stille-DeRossett-Hale single state construction code act, or a part of that code which is of limited application, and includes a modification of or amendment to the code, or a nationally recognized model electrical code adopted by a governmental subdivision pursuant to section 8a of that act.

(12) "Enforcing agency" means the enforcing agency responsible for the administration and enforcement of the electrical code pursuant to section 8a of the Stille-DeRossett-Hale single state construction code act.

(13) "Board" means the electrical administrative board created pursuant to section 2.

**History:** 1956, Act 217, Eff. Aug. 11, 1956;—Am. 1957, Act 205, Imd. Eff. June 4, 1957;—Am. 1960, Act 94, Eff. Aug. 17, 1960;—Am. 1963, Act 187, Imd. Eff. May 15, 1963;—Am. 1966, Act 87, Eff. Mar. 10, 1967;—Am. 1966, Act 220, Eff. Mar. 10, 1967;—Am. 1969, Act 294, Eff. Mar. 20, 1970;—Am. 1974, Act 224, Imd. Eff. July 26, 1974;—Am. 1989, Act 104, Eff. Oct. 1, 1989;—Am. 1990, Act 246, Eff. Mar. 28, 1991;—Am. 1992, Act 130, Imd. Eff. June 30, 1992;—Am. 2008, Act 371, Imd. Eff. Dec. 23, 2008.

**Compiler's note:** For transfer of powers and duties relating to promulgation of rules by the electrical administrative board from the department of labor to the director of the department of consumer and industry services, see E.R.O. No. 1996-2, compiled at MCL 445.2001 of the Michigan Compiled Laws.

### **338.881a Additional definitions.**

Sec. 1a. (1) "Fire alarm system" means a system designed to detect and annunciate the presence of fire, or by-products of fire, installed within a building or structure. Fire alarm system does not include a single station smoke detector.

(2) "Fire alarm contractor" means a person, firm, or corporation engaged in the business of erecting,



installing, altering, repairing, servicing, or maintaining wiring, devices, appliances, or equipment of a fire alarm system.

(3) "Fire alarm specialty technician" means a person other than a fire alarm contractor who, as his or her principal occupation, is engaged in the practical installation or alteration of fire alarm system wiring. A fire alarm contractor may also be a fire alarm specialty technician.

(4) "Fire alarm specialty apprentice technician" means an individual other than a fire alarm contractor or a fire alarm specialty technician who is engaged in learning about and assisting in the installation or alteration of fire alarm system wiring and equipment under the direct personal supervision of a fire alarm specialty technician.

(5) "Fire alarm specialty licensure" means licensure as a fire alarm contractor or a fire alarm specialty or apprentice technician.

**History:** Add. 1992, Act 130, Imd. Eff. June 30, 1992.

### **338.881b Additional definitions.**

Sec. 1b. (1) "Electric sign" means fixed, stationary, or portable self-contained, electrically illuminated equipment that has words or symbols designed to convey information or attract attention. Electric sign includes outline lighting. Electric sign does not include those signs that are indoor or outdoor portable applications or recognized holiday residential signs listed with a recognized testing and approval agency and that use a cord cap-110 volt plug as the electrical energizing attachment method.

(2) "Outline lighting" means an arrangement of incandescent lamps or electric discharge tubing which is an integral part of an electrical sign that outlines certain features, such as the shape of a building or the decoration of a window.

(3) "Sign specialty contractor" means a person, firm, or corporation engaged in the business of manufacturing, installing, maintaining, connecting, or repairing electric sign wiring or devices, including wiring that is directly related to electric signs and is electrically dedicated as a sign circuit.

(4) "Sign specialist" means a person who, as his or her principal occupation, is engaged in the installation, alteration, or repair of electric signs.

(5) "Sign specialty licensure" means licensure as a sign specialist or sign specialty contractor.

(6) "Related wiring" means the following:

(a) Except as otherwise provided in subdivisions (b), (c), and (d), that portion of the electric sign wiring that originates at the load-side terminals of a disconnecting means located in the vicinity of the electric sign involved but does not include the installation of the disconnecting means, complete with line-side connections.

(b) In the case of electric sign installations having sign transformers installed physically apart from the electric sign, that portion of the electric sign wiring that originates at the load-side terminals of a disconnecting means located in the vicinity of the electric sign involved but does not include the installation of the disconnecting means, complete with line-side connections.

(c) In the case of free-standing electric sign installations supplied through underground circuit conductors, that portion of the electric sign wiring that originates at a wiring termination point adjacent to, within, or immediately above the permanent base for the electric sign but does not include, if the base of the sign structure is suitable for use as a raceway, the installation of bushing, complete with free-length circuit conductors extending through to accommodate the connection of the related wiring within the sign structure raceway.

(d) In the case of electric signs specifically designed to be connected directly to the building wiring raceway or cable supply, that portion of the electric sign wiring that originates at the point where the free-length circuit conductors extend through the building wiring raceway or cable at the specifically designed supply location for the electric sign involved but does not include the installation of the building wiring raceway or cable system to the specifically designated point of supply for the electric sign involved, complete with free-length circuit conductors extending through the building wiring raceway or cable to accommodate the connection of the related wiring.

**History:** Add. 1992, Act 130, Imd. Eff. June 30, 1992.

### **338.882 Electrical administrative board; appointment; qualifications and terms of members; ex officio member; designation of chairperson; meetings; industry advisory committees; public meeting; expenses; inspections; fees; appointment of electrical inspectors.**

Sec. 2. (1) The board shall consist of the state fire marshal or his or her representative and 9 other members who are residents of this state, appointed by the governor with the advice and consent of the senate. Of the 9 members appointed by the governor, 1 shall be a representative of an insurance inspection bureau operating in

this state, 1 shall be a representative of an electrical energy supply agency operating in this state, 1 shall be an electrical contractor operating in this state, 1 shall be a master electrician serving as a supervisor, 1 shall be an electrical journeyman, 1 shall be a chief electrical inspector of a municipality, 1 shall be a representative of distributors of electrical apparatus and supplies, 1 shall be a representative of manufacturers primarily and actively engaged in producing material fittings, devices, appliances, fixtures, apparatus, and similar products, used as a part of, or in connection with, an electrical installation, and 1 shall be representative of the general public. The director of the department of labor and economic growth, or the authorized representative of the director, shall be an ex officio member of the board without vote. Each appointment made before January 1, 2007 shall be for a term of 3 years. Each appointment made after December 31, 2006 shall be for 4 years. The members of the board shall hold regular meetings 4 times a year. Before January 1, 2007, the members of the board annually shall elect a chairperson. After December 31, 2006, the governor shall designate a member of the board to serve as its chairperson at the pleasure of the governor and the members of the board may annually elect a vice-chairperson. A special meeting may be called by the chairperson or upon written request of 4 members.

(2) The board may establish industry advisory committees as the board deems advisable to consider issues and prepare recommendations to the board regarding policy, regulation, and implementation of this act.

(3) The business that the board may perform shall be conducted at a public meeting of the board held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. Public notice of the time, date, and place of the meeting shall be given in the manner required by the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

(4) Each of the 9 members of the board appointed by the governor shall be entitled to actual and necessary expenses incurred in the performance of his or her duties as a member of the board, subject to available appropriations.

(5) In a political subdivision where this act applies, the board may inspect electrical wiring and its installation, and shall fix the fees for the inspection at rates not higher than the average rates for similar inspections charged by the 3 highest populated cities in this state. The director of the department of labor and economic growth shall appoint electrical inspectors from the state civil service commission's eligible register.

**History:** 1956, Act 217, Eff. Aug. 11, 1956;—Am. 1957, Act 205, Imd. Eff. June 4, 1957;—Am. 1960, Act 94, Eff. Aug. 17, 1960;—Am. 1966, Act 220, Eff. Mar. 10, 1967;—Am. 1974, Act 278, Imd. Eff. Oct. 14, 1974;—Am. 1976, Act 380, Imd. Eff. Dec. 28, 1976;—Am. 1977, Act 173, Imd. Eff. Nov. 17, 1977;—Am. 1992, Act 130, Imd. Eff. June 30, 1992;—Am. 2006, Act 196, Imd. Eff. June 19, 2006.

**Compiler's note:** For transfer of member of electrical administrative board appointed by director of department of state police to the director of the department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

**Transfer of powers:** See MCL 16.427.

### **338.883 Licenses and certificates; orders and rules; fees; expiration and renewal of license; reinstatement of void license; receipt of completed application; issuance of license within certain period of time; report; examinations; annual report; waiver of fee; "completed application" defined.**

Sec. 3. (1) The department of licensing and regulatory affairs shall grant licenses and certificates under this act to qualified applicants, issue orders and promulgate rules necessary for the enforcement and administration of this act, and enforce and administer this act. The rules shall be promulgated pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(2) The examination fee for licensure of any of the following is \$25.00 if paid after September 30, 2015 and \$100.00 if paid on or before September 30, 2015:

- (a) Master electrician.
- (b) Electrical contractor.
- (c) Electrical journeyman.
- (d) Fire alarm contractor.
- (e) Fire alarm specialty technician.
- (f) Sign specialty contractor.
- (g) Sign specialist.

(3) The fee for an initial license, an apprentice electrician registration, or renewal of a license relating to electricians is as follows:

- (a) If paid after September 30, 2015:
  - (i) Master electrician..... \$25.00
  - (ii) Electrical journeyman..... 20.00
  - (iii) Apprentice electrician..... 5.00

(b) If paid on or before September 30, 2015:

- (i) Master electrician..... \$50.00
- (ii) Electrical journeyman..... 40.00
- (iii) Apprentice electrician..... 15.00

(4) The fee for an initial fire alarm specialty technician license, a fire alarm specialty apprentice technician registration, or renewal of a license or registration is as follows:

(a) If paid after September 30, 2015:

- (i) Fire alarm specialty technician..... \$25.00
- (ii) Fire alarm specialty apprentice technician..... 5.00

(b) If paid on or before September 30, 2015:

- (i) Fire alarm specialty technician..... \$50.00
- (ii) Fire alarm specialty apprentice technician..... 15.00

(5) The fee for an initial sign specialist license or renewal of a sign specialist license is \$20.00 if paid after September 30, 2015 and \$40.00 if paid on or before September 30, 2015.

(6) An apprentice electrician or specialty apprentice technician registration expires on August 31 of each year and is renewable within 30 days after that date if a renewal fee is paid. The amount of the fee is \$10.00 if paid after September 30, 2015 and \$15.00 if paid on or before September 30, 2015. An applicant shall submit proof of a sponsoring employer for initial or renewal registration.

(7) Except as otherwise provided in subsection (8), a license issued under this act expires on December 31 of each year and is renewable not more than 60 days after that date if an application is submitted and the appropriate fee is paid. After March 1 of each year or after March 1 of the renewal year in the case of electrical contractors, fire alarm contractors, or sign specialty contractors, a license that is not renewed is void and may only be reinstated if an application for reinstatement is submitted and the appropriate license fee for the appropriate class is paid.

(8) A license for an electrical contractor, fire alarm contractor, or sign specialty contractor expires December 31 of every third year. A license for an electrical contractor, fire alarm contractor, or sign specialty contractor is renewable not later than on March 1 every third year by submitting an application and paying 1 of the following amounts:

(a) A fee of \$200.00 if paid after September 30, 2015 and \$300.00 if paid on or before September 30, 2015 by electrical contractors and fire alarm contractors.

(b) A fee of \$120.00 if paid after September 30, 2015 and \$200.00 if paid on or before September 30, 2015 by sign specialty contractors.

(9) If a person applying for an initial or reinstatement contractor's license at a time other than between December 31 and March 1 of the year in which the department issues renewal licenses, the department of licensing and regulatory affairs shall compute and charge the 3-year license fee described in subsection (8) on a yearly pro rata basis beginning in the year of the application until the last year of the 3-year license cycle.

(10) The department of licensing and regulatory affairs shall issue an initial or renewal license for an electrical contractor, fire alarm contractor, or sign specialty contractor not later than 90 days after the applicant files a completed application. The date of filing of the application is considered the date the application is received by any agency or department of this state. If the application is considered incomplete by the department of licensing and regulatory affairs, the department of licensing and regulatory affairs shall notify the applicant in writing, or make the information electronically available to the applicant, within 30 days after the date of filing of the incomplete application, describing the deficiency and requesting the additional information. The 90-day period is tolled from the date of notification by the department of licensing and regulatory affairs of a deficiency until the date the requested information is received by the department of licensing and regulatory affairs. The determination of the completeness of an application does not operate as an approval of the application for the license and does not confer eligibility of an applicant determined otherwise ineligible for issuance of a license.

(11) If the department of licensing and regulatory affairs fails to issue or deny a license within the time required by this section, the department of licensing and regulatory affairs shall return the license fee and shall reduce the license fee for the applicant's next renewal application, if any, by 15%. The failure to issue a license within the time required under this section does not allow the department of licensing and regulatory affairs to otherwise delay the processing of the application, and the department shall place that application, when completed, in sequence with other completed applications received at that same time. The department of licensing and regulatory affairs shall not discriminate against an applicant in the processing of the application based on the fact that the license fee was refunded or discounted under this subsection.



(12) The director of the department of licensing and regulatory affairs shall submit a report by December 1 of each year to the standing committees and appropriations subcommittees of the senate and house of representatives concerned with occupational issues. The director shall include all of the following information in the report concerning the preceding fiscal year:

(a) The number of initial and renewal applications the department received and completed within the 90-day time period described in subsection (10).

(b) The number of applications denied by the department.

(c) The number of applicants that were not issued a license within the 90-day time period and the amount of money returned to licensees under subsection (11).

(13) The board shall provide for the examinations required under sections 3b to 3k. The board and department of licensing and regulatory affairs, acting jointly, may develop an examination or contract for the use of an examination developed by another governmental subdivision or any other entity, including, but not limited to, the national assessment institute, that the department of licensing and regulatory affairs and the board, acting jointly, review and determine is designed to test the qualifications and competency of applicants seeking a license under this act. All of the following apply to the examinations described in this subsection:

(a) The examination for electrical journeymen under section 3d and master electricians under section 3c shall include, but not be limited to, questions designed to test an individual's knowledge of this act, any rules promulgated under this act, the Stille-DeRossett-Hale single state construction code act, any code adopted under section 4 of that act, MCL 125.1504, any code adopted under section 8a of that act, MCL 125.1508a, and the theory relative to those codes.

(b) The examination for electrical contractors under section 3b shall include, but not be limited to, questions designed to test an individual's knowledge of this act, any rules promulgated under this act, the Stille-DeRossett-Hale single state construction code act, and the administration and enforcement procedures of any code adopted under section 8a of that act, MCL 125.1508a.

(c) The examination for fire alarm specialty licenses under section 3f, 3g, or 3h shall include questions designed to test an individual's knowledge of this act, any rules promulgated under this act, and the Stille-DeRossett-Hale single state construction code act, as relating to fire alarm systems. The board and department of licensing and regulatory affairs, acting jointly, may require, as a condition for licensure, certification of the applicant in the field of fire alarm systems technology by the national institution for certification in engineering technology or equivalent certification as determined by the board.

(d) The examination for sign specialty licenses under section 3j or 3k shall include, but not be limited to, questions designed to test an individual's knowledge of this act and any rules promulgated under this act relating to electric signs and applicable sections of the code.

(e) Examinations shall be offered at locations throughout the state as determined by the board. The department of licensing and regulatory affairs in consultation with the board may designate a person to give the examination at any location. Copies of examinations developed by a governmental subdivision shall be presented for board approval, shall remain the property of the governmental subdivision, and shall be returned to that governmental subdivision without having been copied or reproduced in any manner.

(14) The department of licensing and regulatory affairs shall annually submit to the members of the legislature a comprehensive report detailing the expenditure of the additional money resulting from the 1989 amendatory act that increased the fees contained in this section.

(15) The department of licensing and regulatory affairs shall waive any fee otherwise required under this section if the person responsible for paying the fee meets any of the following:

(a) If the person is an individual, he or she is, and provides proof satisfactory to the department that he or she is, an honorably discharged veteran of the armed forces of the United States.

(b) If the person is a nonprofit corporation organized on a membership or directorship basis, a majority of the members or directors, as applicable, are, and the person provides proof satisfactory to the department that a majority of the members or directors are, honorably discharged veterans of the armed forces of the United States.

(c) If the person is not an individual or a nonprofit corporation described in subdivision (b), a majority of the shares or other ownership interests of the person are, and the person provides proof satisfactory to the department that those interests are, held by 1 or more honorably discharged veterans of the armed forces of the United States.

(16) As used in this section, "completed application" means an application that is complete on its face and submitted with any applicable licensing fees and any other information, records, approval, security, or similar item required by law or rule from a local unit of government, a federal agency, or a private entity but not from another department or agency of this state.

**History:** 1956, Act 217, Eff. Aug. 11, 1956;—Am. 1960, Act 94, Eff. Aug. 17, 1960;—Am. 1966, Act 220, Eff. Mar. 10, 1967;—Am. 1976, Act 380, Imd. Eff. Dec. 28, 1976;—Am. 1978, Act 414, Imd. Eff. Sept. 28, 1978;—Am. 1982, Act 28, Imd. Eff. Mar. 10, 1982;—Am. 1982, Act 430, Imd. Eff. Dec. 29, 1982;—Am. 1989, Act 104, Eff. Oct. 1, 1989;—Am. 1990, Act 246, Eff. Mar. 28, 1991;—Am. 1992, Act 130, Imd. Eff. June 30, 1992;—Am. 1997, Act 120, Imd. Eff. Oct. 24, 1997;—Am. 2004, Act 275, Imd. Eff. July 23, 2004;—Am. 2008, Act 371, Imd. Eff. Dec. 23, 2008;—Am. 2012, Act 313, Imd. Eff. Oct. 1, 2012.

**Administrative rules:** R 338.1001 et seq. of the Michigan Administrative Code.

### **338.883a Applicant for licensure; conditions for sitting for examination.**

Sec. 3a. An applicant for licensure under this act may sit for an examination upon the applicant doing all of the following:

(a) Filing a completed application form provided by the department of labor for the particular class of electrician licensure, fire alarm specialty licensure, or sign specialty licensure.

(b) Paying the examination fee prescribed in section 3.

(c) Establishing, in a manner satisfactory to the board, the experience requirement or an equivalent of that experience requirement for the particular class of licensure by use of a notarized statement from current and past employers.

(d) In the case of a fire alarm specialty license, establishing, in a manner satisfactory to the board, the certification level under the standards of the national institute for certification in engineering technology, or the equivalent as determined by the board, at the level required for the particular class of fire alarm specialty licensure, subject to section 5(3).

**History:** Add. 1990, Act 246, Eff. Mar. 28, 1991;—Am. 1992, Act 130, Imd. Eff. June 30, 1992.

### **338.883b Electrical contractor's license; requirements.**

Sec. 3b. The department of energy, labor, and economic growth shall issue an electrical contractor's license to a person who does all of the following:

(a) Holds a master electrician's license or has at least 1 master electrician residing in this state who is in his or her full-time employ. That master electrician shall be actively in charge of and responsible for code compliance of all installations of electrical wiring and equipment.

(b) Files a completed application on a form provided by the department of energy, labor, and economic growth.

(c) Pays the examination fee and passes an examination provided for by the board and the department of energy, labor, and economic growth.

(d) Pays the license fee prescribed in section 3.

**History:** Add. 1990, Act 246, Eff. Mar. 28, 1991;—Am. 2010, Act 148, Imd. Eff. Aug. 23, 2010.

### **338.883c Master electrician's license; requirements; failure to pass examination; condition of renewal; license limitation.**

Sec. 3c. (1) The department of labor shall issue a master electrician's license to a person not less than 22 years of age who does all of the following:

(a) Files a completed application form provided by the department of labor.

(b) Pays the examination fee prescribed in section 3 and passes an examination provided for by the board and the department of labor.

(c) Pays the license fee prescribed in section 3.

(d) Has not less than 12,000 hours of experience obtained over a period of not less than 6 years related to electrical construction, the maintenance of buildings, or electrical wiring or equipment under the supervision of a master electrician.

(e) Has held an electrical journeyman's license for not less than 2 years.

(2) Upon failure to pass the master electrician examination 2 times within a period of 2 years, an applicant shall be ineligible to sit for another examination until a period of not less than 1 year from the date of failure of the second examination, at which time he or she shall present to the board proof of the successful completion of a course on code, electrical fundamentals, or electrical theory, approved by the board, in order to become eligible to again sit for an examination.

(3) As a condition of renewal of a master electrician's license, the master electrician shall demonstrate the successful completion of a course, approved by the board, concerning any update or change in the code within 12 months after the update or change in that code. This requirement applies only during or after those years that the code is updated or changed.

(4) A holder of a master electrician's license shall not qualify for more than 1 electrical contractor's license.

**History:** Add. 1990, Act 246, Eff. Mar. 28, 1991.

**338.883d Electrical journeyman's license; requirements; failure to pass examination; condition of renewal.**

Sec. 3d. (1) The department of labor shall issue an electrical journeyman's license to a person not less than 20 years of age who does all of the following:

(a) Files a completed application form provided by the department of labor.

(b) Pays the examination fee prescribed in section 3 and passes an examination provided for by the board and the department of labor.

(c) Pays the license fee prescribed in section 3.

(d) Has not less than 8,000 hours of experience obtained over a period of not less than 4 years related to electrical construction or maintenance of buildings or electrical wiring or equipment under the direct supervision of a person licensed under this act.

(2) Upon failure to pass the electrical journeyman examination 2 times within a period of 2 years, an applicant shall be ineligible to sit for another examination until a period of not less than 1 year from the date of failure of the second examination, at which time he or she shall present to the board proof of the successful completion of a course on code, electrical fundamentals, or electrical theory, approved by the board, in order to become eligible again to sit for an examination.

(3) As a condition of renewal of an electrical journeyman's license, the electrical journeyman shall demonstrate the successful completion of a course, approved by the board, concerning any update or change in the code within 12 months after the update or change in that code. This requirement applies only during or after those years that the code is updated or changed.

**History:** Add. 1990, Act 246, Eff. Mar. 28, 1991.

**338.883e Apprentice electrician; registration; form; certificate of registration; apprenticeship training program; apprentice electrician ratio.**

Sec. 3e. (1) An individual employed as an apprentice electrician shall register with the board on a form provided by the board within 30 days after employment.

(2) The department of labor shall issue a certificate of registration to a person seeking registration upon satisfactory proof of the person's participation in a bona fide apprenticeship training program approved by the board. This program shall be equivalent to the requirements of those imposed by the United States department of labor bureau of apprenticeship and training, subject to subsection (3).

(3) Except as otherwise provided in subsection (4), the ratio of electrical journeymen or master electricians to registered apprentice electricians shall be on the basis of 1 electrical journeyman or master electrician to 1 registered apprentice electrician. The department of labor or an enforcing agency shall enforce the ratio on a jobsite basis.

(4) Notwithstanding subsection (3), in the case of a residential single family dwelling or a multifamily dwelling not exceeding 8 units per building, the department of labor or an enforcing agency shall enforce the apprentice electrician ratio on the basis of 1 electrical journeyman or master electrician to 2 registered apprentice electricians on a jobsite basis.

**History:** Add. 1990, Act 246, Eff. Mar. 28, 1991.

**338.883f Fire alarm contractor's license requirements.**

Sec. 3f. Subject to section 5(3), the department of labor shall issue a fire alarm contractor's license to a person who does all of the following:

(a) Holds a fire alarm specialty technician's license or has not less than 1 fire alarm specialty technician residing in this state who is in his or her full-time employ. The fire alarm specialty technician shall be actively in charge of and responsible for code compliance of all installations of fire alarm system wiring and equipment.

(b) Files a completed application on a form provided by the department of labor.

(c) Pays the examination fee prescribed in section 3 and passes an examination provided for by the board and the department of labor.

(d) Pays the license fee prescribed in section 3.

**History:** Add. 1992, Act 130, Imd. Eff. June 30, 1992.

**338.883g Fire alarm specialty technician's license requirements; renewal; qualifying for more than one license.**

Sec. 3g. (1) Subject to section 5(3), the department of labor shall issue a fire alarm specialty technician's license to a person not less than 20 years of age who does all of the following:

- (a) Files a completed application form provided by the department of labor.
- (b) Pays the examination fee prescribed in section 3 and passes an examination provided for by the board and the department of labor.
- (c) Pays the license fee prescribed in section 3.
- (d) Has certification by the national institute for certification in engineering technology as an associate engineering technician, level II, or the equivalent as determined by the board, in the field of fire alarm systems technology.
- (2) As a condition of renewal of a fire alarm specialty technician's license, the fire alarm specialty technician shall demonstrate the successful completion of a course, approved by the board, concerning any update or change in the code relating to fire alarm systems within 12 months after the update or change in that code. This requirement applies only during or after those years that the code is updated or changed.
- (3) A holder of a fire alarm specialty technician's license shall not qualify for more than 1 fire alarm contractor's license.

**History:** Add. 1992, Act 130, Imd. Eff. June 30, 1992.

### **338.883h Fire alarm specialty apprentice technician; registration requirements; ratio.**

Sec. 3h. (1) An individual employed as a fire alarm specialty apprentice technician shall register with the board on a form provided by the board within 30 days after employment.

(2) The department of labor shall issue a certificate of registration to a person seeking registration upon satisfactory proof of the person's participation in a bona fide apprenticeship training program approved by the board. This program shall be equivalent to the requirements of those imposed by the United States department of labor bureau of apprenticeship and training, subject to subsection (3).

(3) The ratio of fire alarm specialty technicians to registered fire alarm specialty apprentice technicians shall be on the basis of 1 fire alarm specialty technician to 2 registered fire alarm specialty apprentice technicians. The department of labor or an enforcing agency shall enforce the ratio on a jobsite basis.

**History:** Add. 1992, Act 130, Imd. Eff. June 30, 1992.

### **338.883i Specialty licenses not required.**

Sec. 3i. A person holding a valid electrical contractor's license, master electrician's license, electrical journeyman's license, or apprentice electrician's registration shall not be required to hold any specialty licenses in order to perform specialty installations.

**History:** Add. 1992, Act 130, Imd. Eff. June 30, 1992.

### **338.883j Sign specialty contractor's license requirements; license not required.**

Sec. 3j. (1) Subject to section 5(5) or (7), the department of labor shall issue a sign specialty contractor's license to a person who does all of the following:

(a) Holds a sign specialist's license or has not less than 1 sign specialist residing in this state who is in his or her full-time employ. The sign specialist shall be actively in charge of and responsible for code compliance of all installations, maintenance, connection, and repair of electric signs and related wiring.

(b) Files a completed application on a form provided by the department of labor.

(c) Pays the examination fee prescribed in section 3 and passes an examination provided for by the board and the department of labor.

(d) Pays the license fee prescribed in section 3.

(e) Provides evidence of public liability insurance coverage. The board shall promulgate rules pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, setting limits for the amount of coverage depending upon the type of application being utilized. Not later than 180 days after the 1992 amendatory act that added this section, the board shall submit these rules to the joint committee on administrative rules.

(2) A licensed electrical contractor shall not be required to have a sign specialty contractor's license to perform those installations.

**History:** Add. 1992, Act 130, Imd. Eff. June 30, 1992.

### **338.883k Sign specialist's license requirements; eligibility for retaking examination; license renewal; license not required.**

Sec. 3k. (1) Subject to section 5(6) or (7), the department of labor shall issue a sign specialist's license to a person not less than 18 years of age who does all of the following:

(a) Files a completed application form provided by the department of labor.

(b) Pays the examination fee prescribed in section 3 and passes an examination provided for by the board

and the department of labor.

(c) Pays the license fee prescribed in section 3.

(d) Has not less than 4,000 hours of experience, obtained over a period of not less than 2 years, related to the manufacture, installation, maintenance, connection, or repair of electric signs and related wiring as verified by a contractor licensed under this act who is the current employer of the applicant. The hours of experience may be obtained from multiple employers, and equivalent education as determined by the board may be substituted for work experience.

(e) Demonstrates the successful completion of a course concerning the installation, maintenance, connection, or repair of electric signs and related wiring as contained in the sign electrician's workbook published by the American technical publishers, inc. or any other course designed to address the installation, maintenance, connection, or repair of electric signs and related wiring, as approved by the board.

(2) Upon failure to pass the sign specialist examination 2 times within a period of 2 years, an applicant shall be ineligible to sit for another examination until he or she presents to the board proof of the successful completion of a course on code and electrical fundamentals approved by the board, in order to become eligible again to sit for an examination.

(3) As a condition of renewal of a sign specialist's license, the sign specialist shall demonstrate the successful completion of a course, approved by the board, concerning any update or change in applicable sections of the code within 12 months after the update or change in that code. This requirement applies only during or after those years that the code is updated or changed.

(4) A licensed master electrician, journeyman electrician, or apprentice electrician shall not be required to have a sign specialist's license to perform those work activities.

**History:** Add. 1992, Act 130, Imd. Eff. June 30, 1992.

### **338.884 Repealed. 1990, Act 246, Eff. Mar. 28, 1991.**

**Compiler's note:** The repealed section pertained to standards for installation of electrical wiring and equipment.

### **338.885 Installation of electric wiring or electric signs; license required; exception; sign specialty licensure of person licensed in another state; "charitable organization" defined.**

Sec. 5. (1) Except as otherwise provided in section 7, a person, firm, or corporation shall not install any electric wiring, devices, appliances, or appurtenances for the generation, distribution, and utilization of electrical energy, within or on any building, structures, or properties, without being licensed. In a municipality where inspection service is provided, a permit shall be obtained from the board or municipality having jurisdiction. If the electric wiring, devices, appliances, or appurtenances are installed without compensation by a person licensed under this act for or on behalf of a charitable organization, the permit required under this subsection may be obtained by the owner of the property on which the work is performed.

(2) The charitable organization exception under subsection (1) applies only to the reconstruction, renovation, or remodeling of 1- to 4-family dwellings.

(3) Except as otherwise provided in section 7, a person, firm, or corporation shall not erect, install, alter, repair, service, or maintain fire alarm system wiring, devices, appliances, or equipment within a building or structure without being licensed under this act.

(4) Except as otherwise provided in section 7, a person, firm, or corporation shall not install, connect, repair, or maintain electric signs and related wiring without being licensed under this act.

(5) Notwithstanding any other provisions of this act and upon proper application and payment of the appropriate fees, the board and department of labor shall issue a license without examination to a person desiring sign specialty licensure who is licensed, registered, or otherwise regulated in another state if the board determines that the standards in the other state meet or exceed the standards imposed in this act.

(6) As used in this section, "charitable organization" means a not for profit tax-exempt religious, educational, or humane organization.

**History:** 1956, Act 217, Eff. Aug. 11, 1956;—Am. 1957, Act 205, Imd. Eff. June 4, 1957;—Am. 1960, Act 94, Eff. Aug. 17, 1960;—Am. 1966, Act 220, Eff. Mar. 10, 1967;—Am. 1992, Act 130, Imd. Eff. June 30, 1992;—Am. 1998, Act 302, Imd. Eff. July 28, 1998.

### **338.886 Application of act; local regulation, licensing, and registration; reciprocity.**

Sec. 6. (1) This act, except as otherwise provided for in this section, shall not apply within the jurisdiction of a city, village, or township which has adopted or hereafter adopts an ordinance providing standards for the examination and licensing of master electricians, electrical or specialty contractors, electrical journeymen, sign specialists, and fire alarm specialty technicians and the registration of apprentice electricians and fire alarm specialty apprentice technicians which are not less than those prescribed by this act; providing for enforcement that is substantially similar to this act; providing for civil and criminal penalties and a citation



system for minor violations substantially similar to section 8c; providing for the issuance of an identification card that substantially complies with the requirements imposed in section 8c; and providing for the inspection of electrical wiring and equipment.

(2) This act shall not be construed as limiting the power of a municipality to enact such an ordinance, to provide for the licensing of persons, firms, or corporations as electrical or specialty contractors who have a place of business located in the municipality, or to provide for the licensing of journeymen electricians, sign specialists, or fire alarm specialty technicians who reside in the municipality except that the ordinance shall not require either of the following:

(a) The procurement of a license or permit to execute the classes of work specified in section 7(c), (d), (e), and (f).

(b) The procurement of public liability insurance in excess of the coverage required by this act.

(3) Licenses or registrations issued by the board under this act and licenses issued by a municipality having standards for licensing not less than those established by the board shall be recognized by all municipalities.

(4) A municipality providing for electrical inspection by local ordinance may require all electrical or specialty contractors, sign specialists, fire alarm specialty technicians, and classes of electricians doing work in the municipality to register in accordance with its local ordinance.

(5) Municipal registration requirements shall be reciprocal between the municipalities and between municipalities and the board as to registration requirements and fees, except that licensed electrical journeymen, sign specialists, and fire alarm specialty technicians shall not be required to register to work in municipalities under the jurisdiction of the board. All licenses and registrations issued under this act shall be officially recognized by any municipality.

**History:** 1956, Act 217, Eff. Aug. 11, 1956;—Am. 1957, Act 205, Imd. Eff. June 4, 1957;—Am. 1960, Act 94, Eff. Aug. 17, 1960;—Am. 1963, Act 187, Imd. Eff. May 15, 1963;—Am. 1966, Act 87, Eff. Mar. 10, 1967;—Am. 1966, Act 220, Eff. Mar. 10, 1967;—Am. 1969, Act 294, Eff. Mar. 20, 1970;—Am. 1974, Act 224, Imd. Eff. July 26, 1974;—Am. 1990, Act 246, Eff. Mar. 28, 1991;—Am. 1992, Act 130, Imd. Eff. June 30, 1992.

### **338.886a Ordinance requiring application to and licensing by board.**

Sec. 6a. A municipality providing standards for electric wiring and making provisions for inspection and licensing in accordance with this act may require by ordinance that all electrical or specialty contractors, master electricians, fire alarm specialty technicians, sign specialists, and electrical journeymen coming within its licensing jurisdiction shall apply to and be licensed by the board in accordance with the rules and regulations of the board.

**History:** Add. 1966, Act 220, Eff. Mar. 10, 1967;—Am. 1990, Act 246, Eff. Mar. 28, 1991;—Am. 1992, Act 130, Imd. Eff. June 30, 1992.

### **338.887 Electrical contractor's license requirements; exceptions.**

Sec. 7. (1) Except as otherwise provided in this act or in subsection (3), a person, firm, or corporation shall not engage in the business of electrical contracting unless the person, firm, or corporation has received from the board or from the appropriate municipality an electrical contractor's license.

(2) Except as otherwise provided in this act or in subsection (3), a person, other than a person licensed under this act and employed by and working under the direction of a holder of an electrical contractor's license, shall not in any manner undertake to execute any electrical wiring.

(3) A license under this act is not required in the execution of the following classes of work:

(a) Minor repair work, as defined in section 1.

(b) The installation, alteration, repairing, rebuilding, or remodeling of elevators, dumbwaiters, escalators, or man lifts performed under a permit issued by an elevator inspection agency of the state of Michigan or political subdivision of the state of Michigan.

(c) The installation, alteration, or repair of electrical equipment and its associated wiring installed on the premises of consumers or subscribers by or for electrical energy supply or communication agencies for use by such agencies in the generation, transmission, distribution, or metering of electrical energy or for the operation of signals or transmission of intelligence.

(d) The installation, alteration, or repair of electric wiring for the generation and primary distribution of electric current, or the secondary distribution system up to and including the meters, where such work is an integral part of the system owned and operated by an electric light and power utility in rendering its duly authorized service.

(e) Any work involved in the manufacture of electric equipment, including the testing and repairing of such manufactured equipment.

(f) The installation, alteration, or repair of equipment and its associated wiring for the generation or

distribution of electric energy for the operation of signals or transmission of intelligence where such work is in connection with a communication system owned or operated by a telephone or telegraph company in rendering its authorized service as a telephone or telegraph company.

(g) Any installation, alteration, or repair of electrical equipment by a homeowner in a single family home and accompanying outbuildings owned and occupied or to be occupied by the person performing the installation, alteration, or repair of electrical equipment.

(h) Any work involved in the use, maintenance, operation, dismantling, or reassembling of motion picture and theatrical equipment used in any building with approved facilities for entertainment or educational use and which has the necessary permanent wiring and floor and wall receptacle outlets designed for the proper and safe use of such theatrical equipment, but not including any permanent wiring.

(i) Work performed by mechanical contractors licensed in classifications listed in section 6(3)(a), (b), (d), (e), and (f) of the Forbes mechanical contractors act, 1984 PA 192, MCL 338.976, plumbing contractors licensed under 1929 PA 266, MCL 338.901 to 338.917, and employees of persons licensed under those acts while performing maintenance, service, repair, replacement, alteration, modification, reconstruction, or upgrading of control wiring circuits and electrical component parts within existing mechanical systems defined in the mechanical and plumbing codes provided for in the Stille-DeRossett-Hale single state construction code act, 1972 PA 230, MCL 125.1501 to 125.1531, including, but not limited to, energy management systems, relays and controls on boilers, water heaters, furnaces, air conditioning compressors and condensers, fan controls, thermostats and sensors, and all interconnecting wiring associated with the mechanical systems in buildings which are on the load side of the unit disconnect, which is located on or immediately adjacent to the equipment, except for life safety systems wiring.

(j) Electrical wiring associated with the installation, removal, alteration, or repair of a water well pump on a single family dwelling to the first point of attachment in the house from the well, by a registered pump installer under part 127 of the public health code, 1978 PA 368, MCL 333.12701 to 333.12771.

(k) The installation, maintenance, or servicing of burglar alarm systems within a building or structure.

(l) The installation, maintenance, or servicing of listed residential and commercial lawn irrigation equipment, except any permanent wired connections exceeding 30 volts.

(m) The installation, maintenance, or servicing of listed landscape lighting systems and equipment, except any permanent wired connections exceeding 30 volts.

(n) The installation, alteration, maintenance, or repair of electric signs and related wiring by an unlicensed individual under the direct supervision of a licensed sign specialist except that the ratio of unlicensed individuals engaged in this activity shall not exceed 2 unlicensed individuals to 1 licensed sign specialist. An enforcing agency shall enforce this ratio on a jobsite basis.

(o) The construction, installation, maintenance, repair, and renovation of telecommunications equipment and related systems by a person, firm, or corporation primarily engaged in the telecommunications and related information systems industry. This exemption does not include the construction, installation, maintenance, repair, and renovation of a fire alarm system.

**History:** 1956, Act 217, Eff. Aug. 11, 1956;—Am. 1960, Act 94, Eff. Aug. 17, 1960;—Am. 1966, Act 220, Eff. Mar. 10, 1967;—Am. 1992, Act 27, Imd. Eff. Apr. 2, 1992;—Am. 1992, Act 130, Imd. Eff. June 30, 1992;—Am. 2002, Act 205, Imd. Eff. Apr. 29, 2002.

### **338.887a Electrical inspector; appointment and qualifications; requesting identification of licensee; registration.**

Sec. 7a. (1) A governmental subdivision shall appoint as an inspector an individual who shall be licensed as an electrical journeyman or master electrician.

(2) An electrical inspector may request that a person licensed under this act produce the identification card described in section 8c and not less than 1 piece of identification containing the individual's picture.

(3) An inspector shall register under the building officials and inspectors registration act, Act No. 54 of the Public Acts of 1986, being sections 338.2301 to 338.2313 of the Michigan Compiled Laws.

**History:** Add. 1990, Act 246, Eff. Mar. 28, 1991.

### **338.888, 338.888a Repealed. 1990, Act 246, Eff. Mar. 28, 1991.**

**Compiler's note:** The repealed sections pertained to municipalities not covered by act and to issuance of license without examination to residents of certain municipalities.

### **338.888b Investigations and hearings by department of energy, labor, and economic growth; report; grounds for proceeding against person; prohibited activity.**

Sec. 8b. (1) The department of energy, labor, and economic growth has the authority to investigate the activities of a person licensed or registered under this act that are related to the person's licensure or

registration as an electrical or specialty contractor, master electrician, sign specialist, fire alarm specialty technician, electrical journeyman, fire alarm specialty apprentice technician, or apprentice electrician, which activities include, but are not limited to, the grounds described in subsection (2)(a) through (d). The department of energy, labor, and economic growth may hold hearings pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, and shall report its findings to the board.

(2) After a hearing under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, the board shall proceed under section 8e against a person if the board finds that 1 or more of the following grounds for board action exist:

(a) Fraud or deceit in obtaining a license or registration under this act.

(b) The willful violation of a code.

(c) False advertising.

(d) A violation of this act or rules promulgated under this act except in the case of minor violations as described in section 8c.

(3) The board, after a hearing, shall recommend to a governmental subdivision licensing authority that it revoke or suspend the license or registration issued by it to a person.

(4) Activity regulated under this act and requiring licensure or registration shall not be performed by a person whose license or registration has been suspended or revoked or whose license or registration has expired.

**History:** Add. 1966, Act 220, Eff. Mar. 10, 1967;—Am. 1990, Act 246, Imd. Eff. Mar. 28, 1991;—Am. 1992, Act 130, Imd. Eff. June 30, 1992;—Am. 2010, Act 148, Imd. Eff. Aug. 23, 2010.

### **338.888c Enforcement of licensing and registration provisions; rules; identification card; violation.**

Sec. 8c. (1) The licensing and registration provisions of this act shall be enforced by the board, an enforcing agency, and the department of labor.

(2) The board, not later than 12 months after the effective date of the 1990 amendatory act that added this section, shall promulgate rules pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, doing all of the following:

(a) Defining minor violations.

(b) Outlining a fine schedule for minor violations of this act.

(c) Establishing a citation system for minor violations of this act.

(3) The board shall provide that the department issue a card designed for use as identification of a person licensed or registered under this act. The card shall indicate the class and year of licensure or registration and shall be not larger than 3-1/2 inches by 2 inches in size.

(4) An individual licensed or registered under this act shall carry the identification card described in subsection (3) at all times while engaged in activity that is subject to licensure or registration under this act and shall also carry not less than 1 piece of identification containing the individual's picture. The individual, upon request of an inspector, shall produce the identification card described in subsection (3) as well as the picture identification. An individual who fails to produce the card described in subsection (3) is not considered in violation of this subsection if he or she produces the card within 24 hours after being requested by an inspector and presents it to the enforcing agency. Failure to produce any identification upon the request of an inspector shall be considered a violation of this act by the electrical contractor supervising the jobsite.

**History:** Add. 1980, Act 492, Eff. Mar. 31, 1981;—Am. 1990, Act 246, Eff. Mar. 28, 1991.

### **338.888d Violation of MCL 338.3101 to 338.3319 or MCL 408.1057 to 408.1060f; notice; review of license; suspension or revocation of license.**

Sec. 8d. The board shall review the license of a person upon notice by the department of public health that the person has violated the asbestos abatement contractors licensing act, Act No. 135 of the Public Acts of 1986, being sections 338.3101 to 338.3319 of the Michigan Compiled Laws, or sections 57 to 60f of the Michigan occupational safety and health act, Act No. 154 of the Public Acts of 1974, being sections 408.1057 to 408.1060f of the Michigan Compiled Laws and may suspend or revoke that person's license for a knowing violation of those acts.

**History:** Add. 1990, Act 4, Imd. Eff. Feb. 12, 1990.

### **338.888e Sanctions.**

Sec. 8e. (1) After finding the existence of a violation described in section 8b and after an opportunity for a hearing, the board, except as otherwise provided in section 8d, shall impose 1 or more of the following



sanctions for a violation:

- (a) Suspension of the license or registration issued under this act.
- (b) Denial of the license or registration required under this act.
- (c) Revocation of the license or registration issued under this act.
- (d) Restitution.

(2) After finding the existence of 2 violations of this act within a period of 2 years, the board may double the fine imposed under this act.

(3) After finding the existence of 3 violations of this act within a period of 3 years, the board shall revoke the person's license or registration and permanently deny the person's reapplication for a license or registration of the class revoked.

(4) For purposes of this section, 1 or more violations occurring or reported on the same date on the same jobsite shall be considered 1 violation.

(5) If restitution is required to be made by a licensee or registrant under this section, the board may suspend the license or registration of the person required to make the restitution until restitution is made.

**History:** Add. 1990, Act 246, Eff. Mar. 28, 1991;—Am. 2010, Act 148, Imd. Eff. Aug. 23, 2010.

### **338.888f Action to enforce act or rules.**

Sec. 8f. The attorney general or a local prosecuting attorney may initiate an action to enforce this act or rules promulgated under this act.

**History:** Add. 1990, Act 246, Eff. Mar. 28, 1991.

### **338.888g Inconsistent or conflicting provisions.**

Sec. 8g. Any provision of this act which is inconsistent or in conflict with the state construction code act of 1972 is superseded to the extent of the inconsistency or conflict.

**History:** Add. 1990, Act 246, Eff. Mar. 28, 1991.

### **338.889 Payment of income to state construction code fund.**

Sec. 9. Beginning October 1, 1980, all fees and money received by the board for the licensing of persons under this act, and any other income which shall be received under this act, except as provided in sections 5, 6, and 6a, shall be paid into the state construction code fund as created by section 22 of Act No. 230 of the Public Acts of 1972, as amended, being section 125.1522 of the Michigan Compiled Laws.

**History:** 1956, Act 217, Eff. Aug. 11, 1956;—Am. 1966, Act 220, Eff. Mar. 10, 1967;—Am. 1981, Act 150, Imd. Eff. Nov. 10, 1981.

### **338.890 Violations; penalties.**

Sec. 10. (1) Except as provided for in subsection (2), a person licensed or registered under this act who commits a violation of this act that is not a minor violation as described in section 8c or a person not licensed or registered under this act who is performing any activity regulated by this act and is not exempt from licensure or registration under this act is guilty of a civil violation, punishable by a fine of not less than \$1,000.00 per day for each day the violation occurs except that a fine shall not exceed \$5,000.00 in total per violation. A second or subsequent violation is punishable by a fine of not less than \$2,000.00 per day for each day the violation occurs except that a fine shall not exceed \$10,000.00 in total per violation.

(2) A member of the board who intentionally violates section 2(3) shall be subject to the penalties prescribed in the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws.

**History:** 1956, Act 217, Eff. Aug. 11, 1956;—Am. 1977, Act 173, Imd. Eff. Nov. 17, 1977;—Am. 1990, Act 246, Eff. Mar. 28, 1991.

### **338.891 Construction of act as to liability for defective installation or appliances.**

Sec. 11. This act shall not be construed to relieve from or lessen the responsibility or liability of any party owning, operating, controlling or installing any electric wiring, devices, appliances or equipment for damages to persons or property caused by any defect therein, nor shall the state of Michigan be held as assuming any such liability by reason of the inspection or the examination authorized herein, or the certificate of approval, or the license and certificate thereof issued as herein provided.

**History:** 1956, Act 217, Eff. Aug. 11, 1956.

### **338.892 Electrical administrative act; short title.**

Sec. 12. This act shall be known and may be cited as the "electrical administrative act".

**History:** Add. 1960, Act 94, Eff. Aug. 17, 1960.

**EXECUTIVE REORGANIZATION ORDER**  
**E.R.O. No. 1992-6**

**338.900 Transfer of powers and duties of the fire alarm industry advisory committee and the electric sign industry advisory committee to the electrical administrative board by type III transfer.**

WHEREAS, Article V, Section 2, of the Constitution of the State of Michigan of 1963 empowers the Governor to make changes in the organization of the Executive Branch or in the assignment of functions among its units which he considers necessary for efficient administration; and

WHEREAS, the Fire Alarm Industry Advisory Committee and the Electric Sign Industry Advisory Committee were created by Act No. 130 of the Public Acts of 1992, but said Act did not specify who shall appoint these committees, the term of such appointments, the qualifications for serving, the compensation for members and otherwise failed to delineate the nature and scope of the duties and responsibilities of the committees; and

WHEREAS, the Electrical Administrative Board was created by Act No. 217 of the Public Acts of 1956, as amended, being Section 338.881 et seq. of the Michigan Compiled Laws; and

WHEREAS, the functions, duties and responsibilities assigned to the Fire Alarm Industry Advisory Committee and the Electric Sign Industry Advisory Committee can be more effectively organized and carried out by the Electrical Administrative Board; and

WHEREAS, it is necessary in the interests of efficient administration and effectiveness of government to effect changes in the organization of the Executive Branch of government.

NOW, THEREFORE, I, John Engler, Governor of the State of Michigan, pursuant to the powers vested in me by the Constitution of the State of Michigan of 1963 and the laws of the State of Michigan, do hereby order the following:

(1) All the statutory authority, powers, duties, functions and responsibilities of the Fire Alarm Industry Advisory Committee and the Electric Sign Industry Advisory Committee are hereby transferred to the Electrical Administrative Board by a Type III transfer, as defined by Section 3 of Act 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws, and the Fire Alarm Industry Advisory Committee and the Electric Sign Industry Advisory Committee are hereby abolished.

(2) The Director of the Department of Labor shall provide executive direction and supervision for the implementation of the transfers.

(3) All records, personnel, property and unexpended balances of appropriations, allocations, and other funds used, held, employed, available or to be made available to the Fire Alarm Industry Advisory Committee and the Electric Sign Industry Advisory Committee for the functions transferred to the Electrical Administrative Board by this Order are hereby transferred to the Electrical Administrative Board.

(4) The Director of the Department of Labor shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities prescribed by this Order. The Electrical Administrative Board may establish advisory committees to carry out the functions transferred by this Order.

(5) The Director of the Department of Labor shall immediately initiate coordination to facilitate the transfer and develop a memorandum of record identifying any pending settlements, issues of compliance with applicable federal and State laws and regulations, or other obligations to be resolved by the Fire Alarm Industry Advisory Committee and the Electric Sign Industry Advisory Committee.

(6) All rules, orders, contracts and agreements relating to the assigned functions lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended or repealed.

(7) Any suit, action or other proceeding lawfully commenced by, against or before any entity affected by this Order shall not abate by reason of the taking effect of this Order. Any suit, action or other proceeding may be maintained by, against or before the appropriate successor of any entity affected by this Order.

In fulfillment of the requirement of Article V, Section 2, of the Constitution of the State of Michigan of 1963, the provisions of this Order shall become effective 60 days after the filing of this Order.

**History:** 1992 E.R.O. No. 1992-6, Eff. Oct. 5, 1992.

**PLUMBING**  
**Act 266 of 1929**

**338.901-338.917 Repealed. 2002, Act 733, Eff. Mar. 31, 2003.**

**PLUMBING**  
**Act 222 of 1901**

**338.951-338.965 Repealed. 2002, Act 733, Eff. Mar. 31, 2003.**

## **FORBES MECHANICAL CONTRACTORS ACT**

### **Act 192 of 1984**

AN ACT to regulate the use, installation, alteration, and servicing of specified heating, cooling, ventilating, and refrigerating equipment and systems; to create a board of mechanical rules; to provide for the licensing of installing contractors and of servicing contractors of heating, cooling, ventilating, and refrigerating equipment and systems; to prescribe fees; to provide for the promulgation of rules; and to prescribe penalties.

**History:** 1984, Act 192, Eff. Oct. 1, 1984.

**Compiler's note:** For transfer of powers and duties relating to promulgation of rules by the board of mechanical rules from the department of labor to the director of the department of consumer and industry services, see E.R.O. No. 1996-2, compiled at MCL 445.2001 of the Michigan Compiled Laws.

*The People of the State of Michigan enact:*

#### **338.971 Short title.**

Sec. 1. This act shall be known and may be cited as the "Forbes mechanical contractors act".

**History:** 1984, Act 192, Eff. Oct. 1, 1984.

**Compiler's note:** Former MCL 338.971 to 338.991, deriving from Act 208 of 1953 and pertaining to residential builders, were repealed by Act 383 of 1965, Eff. Apr. 1, 1966, and Act 12 of 1966, Eff. Sept. 1, 1966.

For transfer of powers and duties relating to promulgation of rules by the board of mechanical rules from the department of labor to the director of the department of consumer and industry services, see E.R.O. No. 1996-2, compiled at MCL 445.2001 of the Michigan Compiled Laws.

#### **338.972 Definitions.**

Sec. 2. (1) As used in this act:

- (a) "Board" means the board of mechanical rules.
- (b) "Department" means the department of labor.
- (c) "Air conditioning" means the process of treating air to meet the requirements of a conditioned space by controlling, either simultaneously or individually, the air's temperature, humidity, cleanness, and distribution.
- (d) "Cooling" means air conditioning as defined in subdivision (c).
- (e) "Ductwork" means the air distribution arrangement for supply, return, and exhaust in air conditioning systems and in nonair conditioning systems, the materials and methods of which are specified in the Michigan mechanical code, or an equivalent nationally recognized model mechanical code. Ductwork includes flues, vents, and chimneys.
- (f) "Enforcing agency" means an enforcing agency as defined in section 2 of the state construction code act of 1972, Act No. 230 of the Public Acts of 1972, being section 125.1502 of the Michigan Compiled Laws.
- (g) "Equivalent nationally recognized model construction code" means a nationally recognized model construction code adopted pursuant to section 8 of the state construction code act of 1972, Act No. 230 of the Public Acts of 1972, being section 125.1508 of the Michigan Compiled Laws.
- (h) "Equivalent nationally recognized model mechanical code" means a nationally recognized model mechanical code adopted pursuant to section 8 of the state construction code act of 1972, Act No. 230 of the Public Acts of 1972, being section 125.1508 of the Michigan Compiled Laws.
- (i) "Fire suppression system" means an integrated combination of a fire alarm system and fire suppression equipment which as a result of predetermined temperature, rate of temperature rise, products of combustion, flame, or human intervention will discharge a fire extinguishing substance over a fire area.
- (j) "Governmental subdivision" means a governmental subdivision as defined in section 2 of the state construction code act of 1972, Act No. 230 of the Public Acts of 1972, being section 125.1502 of the Michigan Compiled Laws.
- (k) "Heating", used alone, means the use of any fuel or electricity to generate heat in an air conditioning system. When used with a qualifying term such as "hydronic", the term heating assumes the limited meaning expressed by such qualification.
- (l) "Heating, ventilating, and air conditioning" or "HVAC" means the application of equipment and systems to provide air conditioning for occupants of buildings and structures. HVAC does not include the installation of portable self-contained refrigeration equipment and window-type air conditioners of not more than 1-1/2 horsepower.
- (m) "Hydronic heating and cooling" means the application of equipment and systems which provide air conditioning by the controlled forced circulation of fluids or vapors in pipes.
- (n) "Michigan mechanical code" means part 9 of the general rules of the state construction code commission, being R 408.30907 to R 408.30998 of the Michigan administrative code.

(o) "Process piping" means any piping which is not part of a system designed to provide air conditioning or of a refrigeration system. Process piping includes pipes which transfer chemicals and other fluids, gases, or vapors for systems other than air conditioning systems as covered by the Michigan mechanical code or an equivalent nationally recognized model mechanical code.

(p) "Refrigeration" means the use of equipment and systems, including refrigeration piping, employing the refrigeration cycle to generate low temperatures for other than air conditioning equipment and systems. Refrigeration includes such equipment and systems as supermarket refrigeration, industrial refrigeration, the preservation of biological materials, and food storage facilities. Refrigeration does not include the installation of portable self-contained units such as refrigerators, dehumidifiers, and other similar equipment of not more than 1.5 horsepower or other equipment exempted from the Michigan mechanical code.

(q) "Specialty license" means a license granted pursuant to this act which allows the licensee to perform work within limits established by the board in 1 or more of the work classifications set forth in section 6(3).

(r) "Servicing" means the maintenance, repair, and servicing of previously installed equipment and systems.

(s) "State construction code" means the rules promulgated by the state construction code commission under section 4 of the state construction code act of 1972, Act No. 230 of the Public Acts of 1972, being section 125.1504 of the Michigan Compiled Laws.

(t) "Limited heating service" means the servicing of gas-designed sectional boilers having inputs of not more than 1 million British thermal units, utilizing a combustion safeguard designed to shut off the main gas supply 10 or more seconds after pilot flame failure, and all other gas-fired or solid-fuel equipment and systems limited to input ratings of less than 400,000 British thermal units per unit; or oil-fired equipment and systems designed for the use of number 1 or number 2 fuel oil, having a maximum firing rate of less than 5 gallons per hour per unit; or electrical furnaces and electric boilers using the same kilowatts that are equivalent to the fossil fuel British thermal units generated.

(u) "Limited refrigeration and air conditioning service" means the servicing of refrigeration equipment and systems and air conditioning equipment and systems employing the refrigeration cycle of unlimited capacity utilizing group 1 refrigerants as listed in the Michigan mechanical code or an equivalent nationally recognized model mechanical code.

(v) "Unlimited heating service" means the servicing of heating equipment and systems without restrictions concerning thermal capacity or grade of fuel oil or type of fuel.

(w) "Unlimited refrigeration and air conditioning service" means the servicing of refrigeration equipment and systems and air conditioning equipment and systems employing the refrigeration cycle unlimited as to thermal capacity or type of refrigerant.

**History:** 1984, Act 192, Eff. Oct. 1, 1984.

**Compiler's note:** Former MCL 338.971 to 338.991, deriving from Act 208 of 1953 and pertaining to residential builders, were repealed by Act 383 of 1965, Eff. Apr. 1, 1966, and Act 12 of 1966, Eff. Sept. 1, 1966.

### **338.973 Board of mechanical rules; creation; appointment, qualifications, and terms of members; vacancy; removal; disclosure of pecuniary interest; reimbursement; election of vice-chairperson and secretary; designation of chairperson.**

Sec. 3. (1) There is created within the department a board of mechanical rules that consists of the state fire marshal or the state fire marshal's designee, who shall be a permanent member, and 14 residents of the state to be appointed by the governor with the advice and consent of the senate. Appointed members shall be not less than 18 years of age and qualified in their respective fields. Appointed members of the board shall include 1 person from the general public; a member of organized labor representing the mechanical trades; a professional mechanical engineer registered in this state; a representative of an energy-producing public utility of the state; a representative from each of the work classifications set forth in section 6(3); and 2 chief mechanical inspectors of governmental subdivisions, 1 of whom enforces the building officials and code administrators building code, and 1 of whom enforces the international conference of building officials building code. A member of the board appointed by the governor before January 1, 2007 shall be appointed for a term of 2 years, except that a vacancy shall be filled for the unexpired portion of the term. A member of the board appointed by the governor after December 31, 2006 shall be appointed for a term of 4 years, except that a vacancy shall be filled for the unexpired portion of the term. A member of the board may be removed from office by the governor in accordance with section 10 of article V of the state constitution of 1963. A member of the board who has a pecuniary interest in a matter shall disclose that interest before the board takes action in the matter, which disclosure shall be made a matter of record in the board's official proceedings. Each member of the board, except the state fire marshal or the state fire marshal's designee, shall receive reimbursement for actual expenses incurred by the member in the performance of his or her duties as a

member of the board, subject to available appropriations. Travel or other expenses incurred by a member of a board in the performance of an official function shall be payable by the department pursuant to the standardized travel regulations of the department of management and budget, subject to available appropriations. A member of the board shall not serve more than 2 consecutive terms.

(2) At the first meeting of each year, the board shall elect from its membership a vice-chairperson and secretary. The vice-chairperson and secretary shall be elected from those members appointed to the board by the governor, except that the board members who are chief mechanical inspectors are not eligible for election as vice-chairperson of the board. After December 31, 2006, the governor shall designate 1 member of the board to serve as chairperson at the pleasure of the governor.

**History:** 1984, Act 192, Eff. Oct. 1, 1984;—Am. 2006, Act 197, Imd. Eff. June 19, 2006.

**Compiler's note:** Former MCL 338.971 to 338.991, deriving from Act 208 of 1953 and pertaining to residential builders, were repealed by Act 383 of 1965, Eff. Apr. 1, 1966, and Act 12 of 1966, Eff. Sept. 1, 1966.

For transfer of member of board of mechanical rules designated for state fire marshal to the director of department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

### **338.974 Quarterly meetings; notice of special meetings; quorum; advice regarding implementation of act; conducting business at public meeting; notice; availability of writings to public.**

Sec. 4. (1) The board shall hold regular quarterly meetings. Special meetings may be held at the call of the chairperson or 4 members of the board. Written notice of a special meeting shall be mailed to each member not less than 12 days before the date of the meeting.

(2) Eight members of the board shall constitute a quorum for the transaction of business. An approval, decision, or ruling of the board shall not become effective unless approved by 2/3 of the board members attending a meeting.

(3) The board may request a person to appear before the board to advise the board regarding the implementation of this act.

(4) The business which the board performs shall be conducted at a public meeting of the board held in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of the meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976.

(5) A writing prepared, owned, used, in the possession of, or retained by the board in the performance of an official function shall be made available to the public in compliance with the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

**History:** 1984, Act 192, Eff. Oct. 1, 1984.

**Compiler's note:** Former MCL 338.971 to 338.991, deriving from Act 208 of 1953 and pertaining to residential builders, were repealed by Act 383 of 1965, Eff. Apr. 1, 1966, and Act 12 of 1966, Eff. Sept. 1, 1966.

### **338.975 Recommendations to state construction code commission; rules; review and approval of examination or other test.**

Sec. 5. (1) The board may recommend to the state construction code commission the promulgation of rules necessary for the safe design, construction, installation, alteration, servicing, and inspection of heating, cooling, ventilating, and refrigerating systems used in compliance with the Michigan mechanical code, and may recommend modifications, additions, or deletions to this act to update and maintain this act as an effective and enforceable instrument. The board may also recommend to the state construction code commission, after testing and evaluating a material, product, method of manufacture, or method of construction or installation for acceptability under the code that the commission issue certificates of acceptability.

(2) The board, in consultation with the department, may promulgate rules pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.315 of the Michigan Compiled Laws, to provide an examination procedure for applicants for licensure under this act. Before an examination or other test required under this act is administered, the department and the board, acting jointly, shall review and approve the form and content of the examination or other test.

**History:** 1984, Act 192, Eff. Oct. 1, 1984.

**Compiler's note:** Former MCL 338.971 to 338.991, deriving from Act 208 of 1953 and pertaining to residential builders, were repealed by Act 383 of 1965, Eff. Apr. 1, 1966, and Act 12 of 1966, Eff. Sept. 1, 1966.

### **338.976 Examinations; purpose; application; form; fee; issuance of licenses; qualifications of applicant; classification and limitation of contractor's license.**

Sec. 6. (1) Upon the filing of an application on a form prescribed by the department and payment of the



examination fee prescribed in section 10, the department shall conduct examinations to establish the qualifications and competency of applicants seeking licensing for the category for which the application is submitted and shall issue licenses to those who pass the examinations and pay the initial issuance fee, except as otherwise provided for in this act. An applicant who seeks licensure in more than 1 work classification listed in subsection (3) on a single application shall only be required to pay 1 examination fee and 1 initial issuance fee as provided in section 10.

(2) An applicant is not considered eligible for examination unless the applicant is of good moral character, as defined in section 1 of 1974 PA 381, MCL 338.41, and has a minimum of 3 years of experience or an equivalent of that experience acceptable to the board, upon proper showing to the department, in 1 or more of the work classifications listed in subsection (3).

(3) A contractor's license obtained shall be classified and limited as 1 or more of the following:

- (a) Hydronic heating and cooling and process piping.
- (b) HVAC equipment.
- (c) Ductwork.
- (d) Refrigeration.
- (e) Limited service, heating or refrigeration.
- (f) Unlimited service, heating or refrigeration.
- (g) Fire suppression.
- (h) Specialty.

**History:** 1984, Act 192, Eff. Oct. 1, 1984;—Am. 2004, Act 271, Imd. Eff. July 23, 2004;—Am. 2010, Act 149, Imd. Eff. Aug. 23, 2010.

**Compiler's note:** Former MCL 338.971 to 338.991, deriving from Act 208 of 1953 and pertaining to residential builders, were repealed by Act 383 of 1965, Eff. Apr. 1, 1966, and Act 12 of 1966, Eff. Sept. 1, 1966.

### **338.977 Installations, alterations, or servicing; designating contractor of record; notice; performance without compensation or on behalf of charitable organization; facility employing qualified maintenance crew; "charitable organization" defined.**

Sec. 7. (1) Except as provided in subsection (3) and section 14, an individual, partnership, association, corporation, governmental subdivision, college, or university shall not perform installations, alterations, or servicing of work classifications under section 6(3), which are regulated by the state construction code act of 1972, 1972 PA 230, MCL 125.1501 to 125.1531, unless the individual, or an employee of the individual, partnership, association, corporation, governmental subdivision, college, or university has received a contractor's license from the department, which has not been revoked or suspended, and the license is either classified and limited as provided in section 6 or is annotated as provided in section 8, and the holder of the license has secured the appropriate permit from the enforcing agency charged with the responsibility of issuing permits.

(2) An individual, partnership, association, corporation, governmental subdivision, college, or university which performs installations, alterations, or servicing of work classifications under section 6(3) shall designate the holder of a contractor's license as described in subsection (1) as the contractor of record. The department shall be notified in writing of the designation.

(3) If the installation, alteration, or service of a work classification under section 6(3) is performed without compensation by a person licensed under this act for or on behalf of a charitable organization, the permit required under subsection (1) may be obtained by the owner of the property on which the work is performed. This subsection applies only to the reconstruction, renovation, or remodeling of 1- to 4-family dwellings.

(4) This act does not require a contractor of record in a facility that regularly employs a qualified maintenance crew to perform within the facility mechanical contracting work regulated by this act.

(5) As used in this section, "charitable organization" means a not for profit tax-exempt religious, educational, or humane organization.

**History:** 1984, Act 192, Eff. Oct. 1, 1984;—Am. 1985, Act 168, Imd. Eff. Dec. 2, 1985;—Am. 1998, Act 300, Imd. Eff. July 28, 1998.

**Compiler's note:** Former MCL 338.971 to 338.991, deriving from Act 208 of 1953 and pertaining to residential builders, were repealed by Act 383 of 1965, Eff. Apr. 1, 1966, and Act 12 of 1966, Eff. Sept. 1, 1966.

### **338.978 Granting license without examination; application; fee; renewal.**

Sec. 8. (1) A person who was not required by statute before the effective date of this act to be licensed, and who, on the effective date of this act, was engaged in, or worked at, a business as a mechanical contractor in 1 or more of the work classifications set forth in section 6(3), and who is required to be licensed under this act, shall, upon furnishing the department with satisfactory evidence of having been engaged in a business as a

mechanical contractor in 1 or more of the work classifications set forth in section 6(3) for a minimum of 3 out of the 5 years immediately preceding the effective date of this act, and of having the necessary qualifications, shall be granted the license for which the applicant seeks licensure without examination, if the applicant makes application within 1 year after the effective date of this act and pays the initial license fee prescribed in section 10. If the applicant is approved for licensing, the applicant's license shall be annotated showing the work classification or classifications listed in section 6(3) in which the applicant has demonstrated the requisite experience to engage.

(2) A person who was not required by statute to be licensed before the effective date of this act and, on the effective date of this act, is licensed by a municipal licensing board as a mechanical contractor in 1 or more of the work classifications set forth in section 6(3), is required to be licensed under this act, and can furnish the department with satisfactory evidence of the municipal license shall be granted the license for which the person seeks licensure without examination, if the person makes application within 1 year after the effective date of this act and pays the initial license fee prescribed in section 10.

(3) A person who was not required by statute to be licensed before the effective date of this act and, on the effective date of this act, is employed as a mechanical code inspector for a governmental subdivision and has engaged in, or worked at, a business as a mechanical contractor in 1 or more of the work classifications set forth in section 6(3) for 3 out of the 5 years immediately preceding the date of the person's employment as a mechanical code inspector and can furnish the department with satisfactory evidence of the employment and mechanical contracting experience, shall be granted the license for which the person seeks licensure without examination if the person makes application within 1 year after the effective date of this act and pays the initial license fee prescribed in section 10.

(4) A person who, on the effective date of this act, is licensed as a residential maintenance and alteration contractor in the trade of heating and air conditioning installation pursuant to section 2404 of the occupational code, Act No. 299 of the Public Acts of 1980, being section 339.2404 of the Michigan Compiled Laws, and can furnish the department with satisfactory evidence of the license, may be granted a license under this act in the appropriate work classification set forth in section 6(3) without examination if the person makes application within 1 year after the effective date of this act and pays the initial license fee prescribed in section 10.

(5) A person who, on the effective date of this act, is licensed as a residential builder under article 24 of the occupational code, Act No. 299 of the Public Acts of 1980, being sections 339.2401 to 339.2412 of the Michigan Compiled Laws, and can furnish the department with satisfactory evidence of the license and of having been engaged as a mechanical contractor in 1 or more of the work classifications set forth in section 6(3) within the 5 years immediately preceding the effective date of this act, may be granted a license under this act in the appropriate work classification set forth in section 6(3) without examination if the person makes application within 1 year after the effective date of this act and pays the initial license fee prescribed in section 10.

(6) The department may license, without examination and upon the payment of the initial license fee prescribed in section 10, an applicant who is legally authorized mechanical contractor in another state or country if the licensing requirements of the state or country are considered by the board and the department to be substantially equivalent to the licensing requirements of this state and the state or country observes reciprocity in regard to mechanical contractors licensed in this state.

(7) The department may license, without examination or payment of the fees prescribed in section 10, an applicant who is certified to install, modify, test, service, inspect, or maintain required fire suppression systems under the fire prevention code, Act No. 207 of the Public Acts of 1941, being sections 29.1 to 29.33 of the Michigan Compiled Laws and who seeks licensure under this act only in the work classification set forth in section 6(3)(g).

(8) The holder of a license issued pursuant to this section shall have the right to renew the license pursuant to section 10.

**History:** 1984, Act 192, Eff. Oct. 1, 1984.

**Compiler's note:** Former MCL 338.971 to 338.991, deriving from Act 208 of 1953 and pertaining to residential builders, were repealed by Act 383 of 1965, Eff. Apr. 1, 1966, and Act 12 of 1966, Eff. Sept. 1, 1966.

### **338.979 Local licensing requirements prohibited.**

Sec. 9. After the effective date of this act, a governmental subdivision shall not establish or maintain local licensing requirements for the work classifications set forth in section 6(3). A governmental subdivision shall not prohibit a contractor licensed under this act from engaging in the work classification or classifications for which the contractor has a license, unless the contractor is in violation of the mechanical code.

**History:** 1984, Act 192, Eff. Oct. 1, 1984.



**Compiler's note:** Former MCL 338.971 to 338.991, deriving from Act 208 of 1953 and pertaining to residential builders, were repealed by Act 383 of 1965, Eff. Apr. 1, 1966, and Act 12 of 1966, Eff. Sept. 1, 1966.

**338.980 Contractor's license; examination fee; initial and per-year fee for issuance; expiration and renewal; reinstatement; receipt of completed application; issuance of license within certain time period; disposition of fees and other income; report; waiver; "completed application" defined.**

Sec. 10. (1) Subject to subsection (8), the examination fee for a contractor's license is \$25.00 if paid after September 30, 2015 and \$100.00 if paid on or before September 30, 2015. Except as otherwise provided in subsections (2) and (4), the initial and per-year fee for the issuance of a contractor's license is \$75.00 if paid after September 30, 2015 and \$100.00 if paid on or before September 30, 2015.

(2) An initial or renewal contractor's license issued under this act expires on August 31 every third year and is renewable by filing an application and paying the license fee not later than October 31. If an individual is applying for an initial or reinstatement contractor's license at a time other than between August 31 and October 31 of the year in which the department issues renewal licenses, the department shall compute and charge the license fee on a yearly pro rata basis beginning in the year of the application until the last year of the 3-year license cycle. A license that is not renewed is void and may be reinstated only by applying for reinstatement and paying the license fee. An individual who renews his or her license within 3 years after the license is voided under this section is not subject to reexamination for the license.

(3) The department shall issue an initial or renewal license not later than 90 days after the applicant files a completed application. The date of filing of the application is considered the date the application is received by any agency or department of this state. If the application is considered incomplete by the department, the department shall notify the applicant in writing, or make the information electronically available to the applicant, within 30 days after the date of filing of the incomplete application, describing the deficiency and requesting the additional information. The 90-day period is tolled from the date of notification by the department of a deficiency until the date the requested information is received by the department. The determination of the completeness of an application does not operate as an approval of the application for the license and does not confer eligibility of an applicant determined otherwise ineligible for issuance of a license.

(4) If the department fails to issue or deny a license within the time required under this section, the department shall return the license fee and shall reduce the license fee for the applicant's next renewal application, if any, by 15%. The failure to issue a license within the time required under this section does not allow the department to otherwise delay the processing of the application, and the department shall place that application, when completed, in sequence with other completed applications received at that same time. The department shall not discriminate against an applicant in the processing of the application based on the fact that the license fee was refunded or discounted under this subsection.

(5) The director of the department shall submit a report by December 1 of each year to the standing committees and appropriations subcommittees of the senate and house of representatives concerned with occupational issues. The director shall include all of the following information in the report concerning the preceding fiscal year:

(a) The number of initial and renewal applications the department received and completed within the 90-day time period described in subsection (3).

(b) The number of applications denied by the department.

(c) The number of applicants that were not issued a license within the 90-day time period and the amount of money returned to licensees under subsection (4).

(6) The department shall pay all licensing fees, examination fees, and other income received under this act into the state construction code fund created in section 22 of the Stille-DeRossett-Hale single state construction code act, 1972 PA 230, MCL 125.1522.

(7) The department shall annually submit to the members of the legislature a comprehensive report detailing the expenditure of additional money resulting from the 1989 amendatory act that increased the fees contained in this section.

(8) The department shall waive any fee otherwise required under this section if the person responsible for paying the fee meets any of the following:

(a) If the person is an individual, he or she is, and provides proof satisfactory to the department that he or she is, an honorably discharged veteran of the armed forces of the United States.

(b) If the person is a nonprofit corporation organized on a membership or directorship basis, a majority of the members or directors, as applicable, are, and the person provides proof satisfactory to the department that a majority of the members or directors are, honorably discharged veterans of the armed forces of the United States.

States.

(c) If the person is not an individual or a nonprofit corporation described in subdivision (b), a majority of the shares or other ownership interests of the person are, and the person provides proof satisfactory to the department that those interests are, held by 1 or more honorably discharged veterans of the armed forces of the United States.

(9) As used in this section, "completed application" means an application that is complete on its face and submitted with any applicable licensing fees and any other information, records, approval, security, or similar item required by law or rule from a local unit of government, a federal agency, or a private entity but not from another department or agency of this state.

**History:** 1984, Act 192, Eff. Oct. 1, 1984;—Am. 1989, Act 105, Eff. Oct. 1, 1989;—Am. 1997, Act 119, Imd. Eff. Oct. 24, 1997;—Am. 2004, Act 271, Imd. Eff. July 23, 2004;—Am. 2008, Act 372, Imd. Eff. Dec. 23, 2008;—Am. 2012, Act 312, Imd. Eff. Oct. 1, 2012.

**Compiler's note:** Former MCL 338.971 to 338.991, deriving from Act 208 of 1953 and pertaining to residential builders, were repealed by Act 383 of 1965, Eff. Apr. 1, 1966, and Act 12 of 1966, Eff. Sept. 1, 1966.

### **338.981 Investigation; hearings; oaths; testimony; report of findings; grounds for proceeding under MCL 338.986; violation of MCL 338.3101 to 338.3319; review; hearing required for imposition of sanctions; effect of suspended, revoked, or expired license; license required for securing permits.**

Sec. 11. (1) The department may investigate the activities of a licensee related to the licensee's activities as a contractor. The department may hold hearings, administer oaths, and order relevant testimony to be taken and shall report its findings to the board. The board shall proceed under section 16 if the board finds that any of the following grounds exist:

- (a) The practice of fraud or deceit in obtaining a license under this act.
- (b) The practice of fraud or deceit in the performance of work for which a license is required under this act.
- (c) An act of gross negligence.
- (d) The practice of false advertising.
- (e) An act that demonstrates incompetence.
- (f) A violation of this act or a rule promulgated under this act.

(2) The department shall conduct a review upon notice by the department of public health that the licensee has violated the asbestos abatement contractors licensing act, 1986 PA 135, MCL 338.3101 to 338.3319, and may suspend or revoke that person's license for a knowing violation of that act.

(3) A revocation, suspension, or other sanction set forth in subsection (2) or section 16 shall be imposed only after a hearing has been conducted pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(4) The installation, alteration, or servicing of heating, cooling, ventilating, or refrigerating equipment or systems shall not be performed under a license that has been suspended, revoked, or has expired. A license, other than a license issued under this act, shall not be recognized for securing permits to install, alter, or service heating, cooling, ventilating, or refrigerating equipment or systems.

**History:** 1984, Act 192, Eff. Oct. 1, 1984;—Am. 1990, Act 5, Imd. Eff. Feb. 12, 1990;—Am. 2010, Act 149, Imd. Eff. Aug. 23, 2010

**Compiler's note:** Former MCL 338.971 to 338.991, deriving from Act 208 of 1953 and pertaining to residential builders, were repealed by Act 383 of 1965, Eff. Apr. 1, 1966, and Act 12 of 1966, Eff. Sept. 1, 1966.

**Administrative rules:** R 338.901 et seq. of the Michigan Administrative Code.

### **338.982 Designating new contractor of record; time; notice.**

Sec. 12. (1) If an employee of an individual or an employee or officer of a partnership, association, or corporation authorized to perform installations, alterations, or servicing in the work classifications set forth in section 6(3) is a contractor of record designated pursuant to section 7, and ceases to be an employee of the individual or an employee or officer of the partnership, association, or corporation, the individual, partnership, association, or corporation shall have 90 days after the date the contractor of record ceases to be an employee or officer in which to designate an employee or officer who is a holder of a contractor's license under this act as the new contractor of record. The department shall be notified in writing of the designation.

(2) If an individual is licensed to perform installations, alterations, or servicing in 1 or more of the work classifications set forth in section 6(3) and is also the contractor of record, and that individual ceases to do business as a mechanical contractor and sells his or her business interest to another individual, partnership, association, or corporation, the buyer shall have 90 days to designate an employee or officer who is the holder of a contractor's license under this act as the contractor of record. The department shall be notified in writing of the designation.

**History:** 1984, Act 192, Eff. Oct. 1, 1984.

**Compiler's note:** Former MCL 338.971 to 338.991, deriving from Act 208 of 1953 and pertaining to residential builders, were repealed by Act 383 of 1965, Eff. Apr. 1, 1966, and Act 12 of 1966, Eff. Sept. 1, 1966.

### **338.983 Registration of license with enforcing agency of governmental subdivision; validity; fee.**

Sec. 13. A contractor licensed under this act who performs work in a governmental subdivision shall register his or her license with the enforcing agency which issues permits and provides inspection services of contractor's work. The registration shall be valid until the expiration date of the contractor's license. Registration shall be granted by all governmental subdivisions in this state to a contractor licensed under this act upon payment of a fee not to exceed \$15.00.

**History:** 1984, Act 192, Eff. Oct. 1, 1984.

**Compiler's note:** Former MCL 338.971 to 338.991, deriving from Act 208 of 1953 and pertaining to residential builders, were repealed by Act 383 of 1965, Eff. Apr. 1, 1966, and Act 12 of 1966, Eff. Sept. 1, 1966.

### **338.984 Installation by owner of heating or refrigeration system in dwelling; application for permit; inspection.**

Sec. 14. The owner of a single family dwelling which is, or upon completion becomes, the owner's place of residence may personally install a heating or refrigerating system in the dwelling if the owner, upon application for a permit, affirms that he or she is the owner and occupant of the dwelling or shall become the owner and occupant upon completion of the dwelling in which the installation is done and that the applicant will install the equipment in the dwelling for which the permit is requested. The applicant shall apply for and secure the required permits from the enforcing agency of the governmental subdivision and shall obtain the required inspection after the installation is completed and the equipment is placed in operation.

**History:** 1984, Act 192, Eff. Oct. 1, 1984.

**Compiler's note:** Former MCL 338.971 to 338.991, deriving from Act 208 of 1953 and pertaining to residential builders, were repealed by Act 383 of 1965, Eff. Apr. 1, 1966, and Act 12 of 1966, Eff. Sept. 1, 1966.

### **338.985 Violations; penalties.**

Sec. 15. (1) Except as provided in subsection (2), an individual, partnership, association, or corporation who violates this act is guilty of a misdemeanor, punishable by a fine of not more than \$500.00, or imprisonment for not more than 90 days, or both.

(2) A member of the board who intentionally violates section 4(4) shall be subject to the penalties prescribed in the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws.

**History:** 1984, Act 192, Eff. Oct. 1, 1984.

**Compiler's note:** Former MCL 338.971 to 338.991, deriving from Act 208 of 1953 and pertaining to residential builders, were repealed by Act 383 of 1965, Eff. Apr. 1, 1966, and Act 12 of 1966, Eff. Sept. 1, 1966.

### **338.986 Sanctions for violation.**

Sec. 16. After finding the existence of 1 or more of the grounds for board action described in section 11(1) and after an opportunity for a hearing, the board shall impose 1 or more of the following sanctions for each violation:

- (a) Suspension of the license issued under this act.
- (b) Denial of the license required under this act.
- (c) Revocation of the license issued under this act.
- (d) A requirement that restitution be made.

**History:** 1984, Act 192, Eff. Oct. 1, 1984;—Am. 2010, Act 149, Imd. Eff. Aug. 23, 2010.

**Compiler's note:** Former MCL 338.971 to 338.991, deriving from Act 208 of 1953 and pertaining to residential builders, were repealed by Act 383 of 1965, Eff. Apr. 1, 1966, and Act 12 of 1966, Eff. Sept. 1, 1966.

### **338.987 Restitution.**

Sec. 17. If restitution is required to be made under section 16, the license of the person required to make the restitution may be suspended until restitution is made.

**History:** 1984, Act 192, Eff. Oct. 1, 1984.

**Compiler's note:** Former MCL 338.971 to 338.991, deriving from Act 208 of 1953 and pertaining to residential builders, were repealed by Act 383 of 1965, Eff. Apr. 1, 1966, and Act 12 of 1966, Eff. Sept. 1, 1966.

### **338.988 Effective date.**

Sec. 18. This act shall take effect October 1, 1984.

**History:** 1984, Act 192, Eff. Oct. 1, 1984.

**Compiler's note:** Former MCL 338.971 to 338.991, deriving from Act 208 of 1953 and pertaining to residential builders, were repealed by Act 383 of 1965, Eff. Apr. 1, 1966, and Act 12 of 1966, Eff. Sept. 1, 1966.

**PSYCHOLOGIST REGISTRATION ACT**  
**Act 257 of 1959**

**338.1001-338.1019 Repealed. 1978, Act 368, Eff. Sept. 30, 1978.**

**MARRIAGE COUNSELING CERTIFICATION ACT**  
**Act 292 of 1966**

**338.1031-338.1045 Repealed. 1980, Act 299, Imd. Eff. Oct. 21, 1980.**

## **PRIVATE SECURITY BUSINESS AND SECURITY ALARM ACT**

### **Act 330 of 1968**

AN ACT to license and regulate private security guards, private security police, private security guard agencies, private college security forces, and security alarm systems servicing, installing, operating, and monitoring; to provide penalties for violations; to protect the general public against unauthorized, unlicensed and unethical operations by individuals engaged in private security activity or security alarm systems sales, installations, service, maintenance, and operations; to establish minimum qualifications for individuals as well as private agencies engaged in the security business and security alarm systems and operations; to impose certain fees; to create certain funds; and to prescribe certain powers and duties of certain private colleges and certain state departments, agencies, and officers.

**History:** 1968, Act 330, Imd. Eff. July 12, 1968;—Am. 1975, Act 190, Imd. Eff. Aug. 5, 1975;—Am. 2000, Act 411, Eff. Mar. 28, 2001;—Am. 2002, Act 473, Eff. Oct. 1, 2002;—Am. 2010, Act 68, Imd. Eff. May 13, 2010.

*The People of the State of Michigan enact:*

#### **338.1051 Short title.**

Sec. 1. This act shall be known and may be cited as the “private security business and security alarm act”.

**History:** 1968, Act 330, Imd. Eff. July 12, 1968;—Am. 2000, Act 411, Eff. Mar. 28, 2001.

**Constitutionality:** This act, which requires the licensing of guards, does not demonstrate the requisite degree of state action to bring the activities of guards under color of state law so as to subject their activities to constitutional restraint and to require guards to give suspects warnings of their constitutional rights before eliciting inculpatory statements, and especially does not subject the activities of private police who are employed to protect the property and employees of their employer to constitutional restraint because such guards need not be licensed under the act. Grand Rapids v Impens, 414 Mich 667; 327 NW2d 278 (1982).

Participation by an off-duty deputy sheriff from another county, employed as a private guard, with other guards in the apprehension and detention of a shoplifting suspect did not provide a sufficient relationship so as to bring the activities of the guards under color of state law and require warnings of the suspect's constitutional rights before eliciting inculpatory statements by the suspect where the deputy did not obtain the statements and identified himself to the suspect only as a store employee. Grand Rapids v Impens, 414 Mich 667; 327 NW2d 278 (1982).

#### **338.1052 Definitions; persons not subject to act.**

Sec. 2. (1) As used in this act:

(a) "Commission" means the commission on law enforcement standards created under section 3 of the commission on law enforcement standards act, 1965 PA 203, MCL 28.603.

(b) "Department" means the department of energy, labor, and economic growth except that in reference to the regulation of private security police and private college security forces, department means the department of state police.

(c) "Governing board" means a board of regents, board of trustees, board of governors, board of control, or other governing body of an institution of higher education.

(d) "Licensee" means a sole proprietorship, firm, company, partnership, limited liability company, or corporation licensed under this act.

(e) "Private college security force" means a security force created under section 37.

(f) "Private security guard" means an individual or an employee of an employer who offers, for hire, to provide protection of property on the premises of another, and includes an employee of a private college security force.

(g) "Private security police" means that part of a business organization or educational institution primarily responsible for the protection of property on the premises of the business organization, but does not include a private college security force.

(h) "Security alarm system" means a detection device or an assembly of equipment and devices arranged to signal the presence of a hazard requiring urgent attention or to which police are expected to respond. Security alarm system includes any system that can electronically cause an expected response by a law enforcement agency to a premises by means of the activation of an audible signal, visible signal, electronic notification, or video signal, or any combination of these signals, to a remote monitoring location on or off the premises. Security alarm system does not include a video signal that is not transmitted over a public communication system or a fire alarm system or an alarm system that monitors temperature, humidity, or other condition not directly related to the detection of an unauthorized intrusion into a premises or an attempted robbery at a premises.

(i) "Security alarm system agent" means a person employed by a security alarm system contractor whose duties include the altering, installing, maintaining, moving, repairing, replacing, selling, servicing,

monitoring, responding to, or causing others to respond to a security alarm system.

(j) "Security alarm system contractor" means a sole proprietorship, firm, company, partnership, limited liability company, or corporation engaged in the installation, maintenance, alteration, monitoring, or servicing of security alarm systems or who responds to a security alarm system. Security alarm system contractor does not include a business that only sells or manufactures security alarm systems unless the business services security alarm systems, installs security alarm systems, monitors or arranges for the monitoring of a security alarm system, or responds to security alarm systems at the protected premises.

(k) "Security business" means a person or business entity engaged in offering, arranging, or providing 1 or more of the following services:

(i) Security alarm system installation, service, maintenance, alteration, or monitoring.

(ii) Private security guard.

(iii) Private security police.

(2) All businesses furnishing security alarm systems for the protection of persons and property, whose employees and security technicians travel on public property and thoroughfares in the pursuit of their duties, are subject to this act.

(3) A communications common carrier providing communications channels under tariffs for the transmission of signals in connection with an alarm system is not subject to this act.

(4) Railroad policemen appointed and commissioned under the railroad code of 1993, 1993 PA 354, MCL 462.101 to 462.451, are exempt from this act.

**History:** 1968, Act 330, Imd. Eff. July 12, 1968;—Am. 1969, Act 168, Imd. Eff. Aug. 5, 1969;—Am. 1975, Act 190, Imd. Eff. Aug. 5, 1975;—Am. 2000, Act 411, Eff. Mar. 28, 2001;—Am. 2002, Act 473, Eff. Oct. 1, 2002;—Am. 2010, Act 68, Imd. Eff. May 13, 2010.

### **338.1053 License required; permission for device delivering recorded message to public service, utility, or police agency required; violation; penalty.**

Sec. 3. (1) Unless licensed under this act, a sole proprietorship, firm, company, partnership, limited liability company, or corporation shall not engage in the business of security alarm system contractor, private security guard, private security police, private college security force, patrol service, or an agency furnishing those services. A person, firm, company, partnership, limited liability company, or corporation shall not advertise its business to be that of security alarm system contractor, security alarm system agent, private security guard agency, or an agency furnishing those services without having first obtained from the department a license to do so for each office and branch office to be owned, conducted, managed, or maintained for the conduct of that business.

(2) A person shall not sell, install, operate, adjust, arrange for, or contract to provide a device which upon activation, either mechanically, electronically, or by any other means, initiates the automatic calling or dialing of, or makes a connection directly to, a telephone assigned to a public service, utility, or police agency, for the purpose of delivering a recorded message, without first receiving written permission from that service, utility, or agency.

(3) A person who violates this section is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$1,000.00, or both.

**History:** 1968, Act 330, Imd. Eff. July 12, 1968;—Am. 1974, Act 113, Eff. July 1, 1974;—Am. 1975, Act 190, Imd. Eff. Aug. 5, 1975;—Am. 1978, Act 432, Imd. Eff. Oct. 5, 1978;—Am. 2000, Act 411, Eff. Mar. 28, 2001;—Am. 2002, Act 473, Eff. Oct. 1, 2002;—Am. 2010, Act 68, Imd. Eff. May 13, 2010.

### **338.1054 Issuance of separate licenses for different security services; private detective or investigator services.**

Sec. 4. The department may issue separate licenses to security alarm system contractors, private college security forces, private security police, and private security guard agencies. This section does not prevent a private detective or private investigator licensed under the professional investigator licensure act, 1965 PA 285, MCL 338.821 to 338.851, from performing the services of a private security guard or private security police except that a private security guard or private security police may not perform the services of a private detective or private investigator without obtaining a private detective or private investigator license.

**History:** 1968, Act 330, Imd. Eff. July 12, 1968;—Am. 1975, Act 190, Imd. Eff. Aug. 5, 1975;—Am. 2000, Act 411, Eff. Mar. 28, 2001;—Am. 2010, Act 68, Imd. Eff. May 13, 2010.

### **338.1055 License; issuance; term; local license not required.**

Sec. 5. The department, upon proper application and upon being satisfied that the applicant is qualified, shall issue the applicant a license to conduct business as an alarm system contractor or a private security guard or agency for a period of 2 years from date of issuance. Upon the issuance of a license to conduct



business as an alarm system contractor or a private security guard or agency, the applicant shall not be required to obtain any other license from a municipality or political subdivision of this state.

**History:** 1968, Act 330, Imd. Eff. July 12, 1968;—Am. 1975, Act 190, Imd. Eff. Aug. 5, 1975.

### **338.1056 License; qualifications.**

Sec. 6. (1) The department shall issue a license to conduct business as a security alarm system contractor or a private security guard, private security police, or to a private security guard business, if it is satisfied that the applicant is a sole proprietorship, or if a firm, partnership, company, limited liability company, or corporation the sole or principal license holder is an individual, who meets all of the following qualifications:

- (a) Is not less than 25 years of age.
  - (b) Has a high school education or its equivalent.
  - (c) In the case of a licensee under this section after March 28, 2001, has not been under any sentence, including parole, probation, or actual incarceration, for the commission of a felony.
  - (d) In the case of a person licensed under this section on or before March 28, 2001, has not been under any sentence, including parole, probation, or actual incarceration, for the commission of a felony within 5 years before the date of application.
  - (e) Has not been convicted of an offense listed in section 10(1)(c) within 5 years before the date of application.
  - (f) Has not been dishonorably discharged from a branch of the United States military service.
  - (g) In the case of an applicant for a private security guard or agency license, has been lawfully engaged in 1 or more of the following:
    - (i) In the private security guard or agency business on his or her own account in another state for a period of not less than 3 years.
    - (ii) In the private security guard or agency business for a period of not less than 4 years as an employee of the holder of a certificate of authority to conduct a private security guard or agency business and has had experience reasonably equivalent to not less than 4 years of full-time guard work in a supervisory capacity with rank above that of patrolman.
    - (iii) In law enforcement employment as a certified police officer on a full-time basis for not less than 4 years for a city, county, or state government, or for the United States government.
    - (iv) In the private security guard or agency business as an employee or on his or her own account or as a security administrator in private business for not less than 2 years on a full-time basis, and is a graduate with a baccalaureate degree or its equivalent in the field of police administration or industrial security from an accredited college or university.
  - (h) In the case of an applicant for a security alarm system contractor license, has been lawfully engaged in either or both of the following:
    - (i) The security alarm system contractor business on his or her own account for a period of not less than 3 years.
    - (ii) The security alarm system contractor business for a period of not less than 4 years as an employee of the holder of a certificate of authority to conduct a security alarm system contractor business, and has had experience reasonably equivalent to at least 4 years of full-time work in a supervisory capacity or passes a written exam administered by the department designed to measure his or her knowledge and training in security alarm systems.
  - (i) Has posted with the department a bond provided for in this act.
  - (j) Has not been adjudged insane unless restored to sanity by court order.
  - (k) Does not have any outstanding warrants for his or her arrest.
- (2) In the case of a sole proprietorship, firm, partnership, company, or corporation now doing or seeking to do business in this state, the resident manager shall comply with the applicable qualifications of this section.

**History:** 1968, Act 330, Imd. Eff. July 12, 1968;—Am. 1969, Act 168, Imd. Eff. Aug. 5, 1969;—Am. 1975, Act 190, Imd. Eff. Aug. 5, 1975;—Am. 1994, Act 326, Eff. Mar. 30, 1995;—Am. 2000, Act 411, Eff. Mar. 28, 2001;—Am. 2002, Act 473, Eff. Oct. 1, 2002.

### **338.1056a License to operate private college security force; issuance to private college or university.**

Sec. 6a. The department may issue a license to operate a private college security force to a private college or university, but shall not issue that license until the private college or university has demonstrated compliance with the requirements of sections 37 to 42.

**History:** Add. 2010, Act 68, Imd. Eff. May 13, 2010.

### **338.1057 License; application; references; investigation; approval; nonrenewable temporary**

**license; fees; section inapplicable to private college security force.**

Sec. 7. (1) The department shall prepare a uniform application for the particular license and shall require the person filing the application to obtain reference statements from at least 5 reputable citizens who have known the applicant for a period of at least 5 years, who can attest that the applicant is honest, of good character, and competent, and who are not related or connected to the applicant by blood or marriage.

(2) Upon receipt of the application and application fee, the department shall investigate the applicant's qualifications for licensure.

(3) Except for a private college security force, the application and investigation are not considered complete until the applicant has received the approval of the prosecuting attorney and the sheriff of the county in this state within which the principal office of the applicant is to be located. If the office is to be located in a city, township, or village, the approval of the chief of police may be obtained instead of the sheriff. Branch offices and branch managers shall be similarly approved.

(4) If a person has not previously been denied a license or has not had a previous license suspended or revoked, the department may issue a nonrenewable temporary license to an applicant. If approved by the department, the temporary license is valid until 1 or more of the following occur but not to exceed 120 days:

- (a) The completion of the investigations and approvals required under subsections (1), (2), and (3).
- (b) The completion of the investigation of the subject matter addressed in section 6.
- (c) The completion of the investigation of any employees of the licensee as further described in section 17.
- (d) Confirmation of compliance with the bonding or insurance requirements imposed in section 9.
- (e) The applicant fails to meet 1 or more of the requirements for licensure imposed under this act.
- (5) The fees for a temporary license shall be the applicable fees as described in section 9.
- (6) This section does not apply to a private college security force.

**History:** 1968, Act 330, Imd. Eff. July 12, 1968;—Am. 1975, Act 190, Imd. Eff. Aug. 5, 1975;—Am. 2000, Act 411, Eff. Mar. 28, 2001;—Am. 2002, Act 473, Eff. Oct. 1, 2002;—Am. 2010, Act 68, Imd. Eff. May 13, 2010.

**338.1058 Application; signature and verification; contents; photographs; section inapplicable to private college security force.**

Sec. 8. (1) Each applicant shall sign and verify the application. Each application shall contain at least all of the following:

- (a) The name and principal address where the individual or business entity is located in this state.
- (b) The address and location of any branch office of the business.
- (c) The certificate of incorporation of the business, if applicable.

(2) Each applicant shall submit 2 passport quality photographs of the applicant with the application. If the applicant is a business entity, the resident manager of the business shall submit 2 passport quality photographs of himself or herself.

(3) This section does not apply to a private college security force.

**History:** 1968, Act 330, Imd. Eff. July 12, 1968;—Am. 2000, Act 411, Eff. Mar. 28, 2001;—Am. 2010, Act 68, Imd. Eff. May 13, 2010.

**338.1059 License; issuance; fees; bond; insurance; term; form; additional license for branch office; refunds; receipt of completed application; issuance of license within certain time period; report; security business fund; "completed application" defined.**

Sec. 9. (1) The department, when satisfied of the good character, competence, and integrity of the applicant, or if the applicant is a firm, company, partnership, limited liability company, or corporation, of its individual members or officers, or, if the applicant is a private college or university, of its governing board, shall issue to the applicant a license. The issuance of the license is conditioned upon the applicant's paying to the department for each license \$200.00 if a sole proprietorship, or \$300.00 if a private security guard firm, company, partnership, limited liability company, or corporation, or \$500.00 if a security alarm system contractor, and upon the applicant's executing, delivering, and filing with the department a bond in the sum of \$25,000.00. The bond shall be conditioned upon the faithful and honest conduct of the business by the applicant and shall be approved by the department. In lieu of a bond, the applicant may furnish a policy of insurance issued by an insurer authorized to do business in this state naming the licensee and the state as coinsureds in the amount of \$25,000.00 for property damages, \$100,000.00 for injury to or death of 1 person, and \$200,000.00 for injuries to or deaths of more than 1 person arising out of the operation of the licensed activity. The license is valid for 2 years but is revocable at all times by the department for cause shown. The bonds shall be taken in the name of the people of the state and a person injured by the willful, malicious, and wrongful act of the licensee or any of his or her agents or employees may bring an action on the bond or insurance policy in his or her own name to recover damages suffered by reason of the wrongful act. The

license certificate shall be in a form to be prescribed by the department.

(2) If a licensee desires to open a branch office, he or she may receive a license for that branch following approval as required in section 7 and payment to the department of an additional fee of \$50.00 for each private security guard branch office license and \$100.00 for each security alarm system contractor branch office license.

(3) The additional license issued under subsection (2) shall be posted in a conspicuous place in the branch office and shall expire on the same date as the initial license.

(4) Subject to subsection (5), if the license is denied, revoked, or suspended for cause, no refund shall be made of the license fees or a part of the license fees.

(5) Beginning July 23, 2004, the department shall issue an initial or renewal license not later than 180 days after the applicant files a completed application. Receipt of the application is considered the date the application is received by any agency or department of the state of Michigan. If the application is considered incomplete by the department, the department shall notify the applicant in writing, or make the information electronically available, within 30 days after receipt of the incomplete application, describing the deficiency and requesting the additional information. The 180-day period is tolled upon notification by the department of a deficiency until the date the requested information is received by the department. The determination of the completeness of an application does not operate as an approval of the application for the license and does not confer eligibility of an applicant determined otherwise ineligible for issuance of a license.

(6) If the department fails to issue or deny a license within the time required by this section, the department shall return the license fee and shall reduce the license fee for the applicant's next renewal application, if any, by 15%. The failure to issue a license within the time required under this section does not allow the department to otherwise delay the processing of the application, and that application, upon completion, shall be placed in sequence with other completed applications received at that same time. The department shall not discriminate against an applicant in the processing of the application based upon the fact that the license fee was refunded or discounted under this subsection.

(7) Beginning October 1, 2005, the director of the department shall submit a report by December 1 of each year to the standing committees and appropriations subcommittees of the senate and house of representatives concerned with occupational issues. The director shall include all of the following information in the report concerning the preceding fiscal year:

(a) The number of initial and renewal applications the department received and completed within the 180-day time period described in subsection (5).

(b) The number of applications denied.

(c) The number of applicants not issued a license within the 180-day time period and the amount of money returned to licensees and registrants under subsection (6).

(8) The fees collected by the department under this section shall be deposited into the security business fund created in subsection (9).

(9) The security business fund is created within the state treasury. The department shall deposit all license fees collected under this act into the fund. The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments. Money in the fund at the close of the fiscal year shall remain in the fund and be available for appropriation and expenditure by the department in subsequent fiscal years. The money in the fund shall not lapse to the general fund. The department shall expend money from the fund, upon appropriation, only for enforcement and administration of this act.

(10) As used in this section, "completed application" means an application complete on its face and submitted with any applicable licensing fees as well as any other information, records, approval, security, or similar item required by law or rule from a local unit of government, a federal agency, or a private entity but not from another department or agency of the state of Michigan.

**History:** 1968, Act 330, Imd. Eff. July 12, 1968;—Am. 1975, Act 190, Imd. Eff. Aug. 5, 1975;—Am. 2000, Act 411, Eff. Mar. 28, 2001;—Am. 2002, Act 473, Eff. Oct. 1, 2002;—Am. 2004, Act 270, Imd. Eff. July 23, 2004;—Am. 2010, Act 68, Imd. Eff. May 13, 2010.

### **338.1060 License; revocation; grounds; failure to pay fines or fees; surrender of license; misdemeanor.**

Sec. 10. (1) The department may revoke any license issued under this act if it determines, upon good cause shown, that the licensee or his or her manager, if the licensee is an individual, or if the licensee is not an individual, that any of its officers, directors, partners or its manager, has done any of the following:

(a) Made any false statements or given any false information in connection with an application for a license or a renewal or reinstatement of a license.

- (b) Violated any provision of this act.
  - (c) Been, while licensed or employed by a licensee, convicted of a felony or a misdemeanor involving any of the following:
    - (i) Dishonesty or fraud.
    - (ii) Unauthorized divulging or selling of information or evidence.
    - (iii) Impersonation of a law enforcement officer or employee of the United States, this state, or a political subdivision of this state.
    - (iv) Illegally using, carrying, or possessing a dangerous weapon.
    - (v) Two or more alcohol related offenses.
    - (vi) Controlled substances under the public health code, 1978 PA 368, MCL 333.1101 to 333.25211.
    - (vii) An assault.
  - (d) Knowingly submitted any of the following:
    - (i) A name other than the true name of a prospective employee.
    - (ii) Fingerprints not belonging to the prospective employee.
    - (iii) False identifying information in connection with the application of a prospective employee.
- (2) The department shall not renew a license of a licensee who owes any fine or fee to the department at the time for a renewal.
- (3) Within 48 hours after notification from the department of the revocation of a license under this act, the licensee shall surrender the license and the identification card issued under section 14. A person who violates this subsection is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00, or both.

**History:** 1968, Act 330, Imd. Eff. July 12, 1968;—Am. 1994, Act 326, Eff. Mar. 30, 1995;—Am. 2000, Act 411, Eff. Mar. 28, 2001;—Am. 2002, Act 473, Eff. Oct. 1, 2002.

### **338.1061 Refund of application or license fee.**

Sec. 11. The department shall not refund a license or application fee unless a showing is made of mistake, inadvertence, error in the collection of the fee, or noncompliance with the time periods described in section 9(5).

**History:** 1968, Act 330, Imd. Eff. July 12, 1968;—Am. 2000, Act 411, Eff. Mar. 28, 2001;—Am. 2004, Act 270, Imd. Eff. July 23, 2004.

### **338.1062 Posting certificate of license.**

Sec. 12. Upon receipt of a certificate of license from the department the licensee shall post it in a conspicuous place in his office.

**History:** 1968, Act 330, Imd. Eff. July 12, 1968.

### **338.1063 Change in name or location; report; failure to notify department.**

Sec. 13. (1) Any change in the name or location of the agency or of a branch office or subagency shall be reported by the licensee to the department at least 10 days before the change becomes effective, upon receipt of which the department shall prepare and forward a certificate showing the change. The licensee shall return the old certificate within 3 business days after the change.

(2) Failure to notify the department of a change in name or location may result in license suspension.

**History:** 1968, Act 330, Imd. Eff. July 12, 1968;—Am. 2002, Act 473, Eff. Oct. 1, 2002.

### **338.1064 Identification card; issuance; form; contents; recall; custody; unauthorized use; suspension and reinstatement; duplicates.**

Sec. 14. (1) Upon issuing a license, the department shall issue an identification card to the principal license holder, and if the licensee is a partner in a partnership to each partner, and if the license holder is a corporation to each resident officer or manager but only if requested by a resident officer or manager.

(2) The form and contents of the identification card shall be prescribed by the department, and the card shall be recalled by the department if the license is revoked.

(3) Only 1 identification card shall be issued for each person entitled to receive it. The licensee is responsible for the maintenance, custody, and control of the identification card and shall not let, loan, sell, or otherwise permit unauthorized persons or employees to use it. This section does not prevent an agency from issuing its own identification cards to its employees if they are approved as to form and content by the department. The individual card shall not bear the seal of the state, and the employee shall be designated as either security alarm system agent, private security police officer, private college security force officer, security guard, or security technician.

(4) The department may suspend a license issued under this act if the licensee fails to comply with any of the requirements of this act. Unless a license is required to be revoked for a violation of this act, the department shall reinstate a suspended license upon the licensee complying with this act and the licensee paying a \$100.00 reinstatement fee.

(5) Upon proper application and for sufficient reasons shown, the department may issue duplicates of the original certificate of license or identification card.

**History:** 1968, Act 330, Imd. Eff. July 12, 1968;—Am. 1975, Act 190, Imd. Eff. Aug. 5, 1975;—Am. 2000, Act 411, Eff. Mar. 28, 2001;—Am. 2002, Act 473, Eff. Oct. 1, 2002;—Am. 2010, Act 68, Imd. Eff. May 13, 2010.

### **338.1065 Nonassignability of license.**

Sec. 15. A license issued under the provisions of this act is not assignable, and is personal to such licensee.

**History:** 1968, Act 330, Imd. Eff. July 12, 1968.

### **338.1066 Unlawful manufacture of badge or shield; unlawful display of badge, shield, card, or license; distribution of card or license; buying or receiving spurious identification; violation; penalty; confiscation of card or license; separate offenses.**

Sec. 16. A person shall not manufacture a badge or shield which purports to indicate that the holder is a licensed alarm system contractor, alarm system agent, private security guard or agency, or any of those persons as listed, in section 2. A person shall not display for sale a badge, shield, identification card, or certificate of license, by which the holder might mislead the public into thinking that the holder is a licensed alarm system contractor, alarm system agent, or private security guard, or agency. A person, firm, company, partnership, or corporation shall not distribute an identification card or certificate of license in this state except as provided by this act. A person shall not knowingly buy or receive from a source a form of spurious identification as an alarm system contractor, alarm system agent, or a private security guard or agency. A violation of this section is a misdemeanor, and an unauthorized identification card or certificate of license shall be confiscated by a law enforcement officer of the state. Each day the violation continues shall constitute a separate offense.

**History:** 1968, Act 330, Imd. Eff. July 12, 1968;—Am. 1975, Act 190, Imd. Eff. Aug. 5, 1975.

### **338.1067 Employees of licensee; conduct and qualifications; personnel information; employee roster to be filed with department; false statements or representations; revocation of license; misdemeanor.**

Sec. 17. (1) A licensee may employ as many persons as he or she considers necessary to assist him or her in his or her work of security alarm system contractor, private security police, private college security force, or private security guard and in the conduct of his or her business, and at all times during the employment is accountable for the good conduct in the business of each person so employed.

(2) Employees in the employ of a licensee after March 28, 2001 shall meet the qualifications outlined in section 6(1)(c), (e), (j), and (k), be at least 18 years of age, and have had at least an eighth grade education or its equivalent. An employee in the employ of a licensee on or before March 28, 2001 shall meet the qualifications outlined in section 6(1)(d), (e), (j), and (k), be at least 18 years of age, and have had at least an eighth grade education or its equivalent. Employees hired by a licensee after June 21, 2002 shall meet the qualifications outlined in section 6(1)(c), (e), (j), and (k), be at least 18 years of age, and have at least a high school diploma, a GED, or its equivalent.

(3) A licensee shall keep and maintain in this state adequate and complete personnel information on all persons employed by him or her. A complete employee roster in a manner described by the department shall be filed with the department by each licensee on a quarterly basis. The rosters must be filed with the department by April 15, July 15, October 15, and January 15 for the preceding quarter. Failure to submit accurate rosters is cause for suspension of the license. A renewal application shall not be processed if the quarterly roster has not been received for each quarter of the preceding 2-year license period.

(4) If a licensee falsely states or represents that a person is or has been in his or her employ, the false statement or representation is sufficient cause for the revocation of the license.

(5) A person shall not falsely state or represent that he or she is an agent of a licensed security alarm system contractor, private security police officer, private college security force officer, or private security guard. A person who violates this subsection is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00, or both.

**History:** 1968, Act 330, Imd. Eff. July 12, 1968;—Am. 1969, Act 168, Imd. Eff. Aug. 5, 1969;—Am. 1972, Act 78, Imd. Eff. Mar. 9, 1972;—Am. 1975, Act 190, Imd. Eff. Aug. 5, 1975;—Am. 1994, Act 326, Eff. Mar. 30, 1995;—Am. 2000, Act 411, Eff. Mar. 28, 2001;—Am. 2002, Act 473, Eff. Oct. 1, 2002;—Am. 2010, Act 68, Imd. Eff. May 13, 2010.



**338.1068 Employment of unqualified employees; fingerprints; fee; background check of prospective employee; employment application; refusal to surrender identification.**

Sec. 18. (1) A licensee shall not knowingly employ any person who fails to meet the requirements of section 17.

(2) The licensee shall cause fingerprints to be taken of all prospective employees who are direct providers of the security business, which fingerprints shall be submitted to the department of state police and the federal bureau of investigation for a state and national criminal history background check. The fingerprints shall be accompanied by a fingerprint processing fee in the amount prescribed by section 3 of 1935 PA 120, MCL 28.273, as well as any fees imposed by the federal bureau of investigation. The results of the national criminal history background check as returned by the federal bureau of investigation to the department of state police shall be used by the department to make a fitness determination. A licensee shall not employ a person who is a direct provider of the security business before submitting fingerprints to the department of state police.

(3) The fingerprints required to be taken under subsection (2) may be taken by a law enforcement agency or any other person determined by the department of state police to be qualified to take fingerprints. If a licensee takes the fingerprints, that licensee shall obtain training in taking fingerprints from the department of state police or a law enforcement agency or other person determined qualified by the department of state police.

(4) A licensee shall request the department of state police to conduct a background check of each prospective employee who is a direct provider of the security business based upon a name check. The licensee shall obtain a complete and signed employment application for all individuals for whom a name check is requested and conducted. The employment application shall be retained for at least 1 year from the date of its submission. The department of state police shall conduct the background check upon a written, electronic, or telephonic request of a licensee accompanied by a fee of \$15.00. The background check shall be conducted not later than 3 days after the date a written request is made and not later than 24 hours after a telephonic or electronic request is made. Provisional clearance based on the name check shall allow the employee to be employed as a security guard, for a period of time not to exceed 90 days, pending final clearance based upon a fingerprint check as provided for in subsection (2). If an approval is once denied, that individual may not again be employed as a direct provider of the security business by the submitting licensee except upon receipt of an approved fingerprint clearance. A licensee or employee of a licensee who uses a name check or results of a name check for purposes other than prospective employment is guilty of a misdemeanor punishable by imprisonment for not more than 93 days, a fine of not more than \$1,000.00, or both.

(5) The department of state police may enter into an agreement with a licensee for the payment of fees imposed pursuant to this act.

(6) Any employee who, upon demand, fails to surrender to the licensee his or her identification card and any other property issued to him or her for use in connection with his or her employer's business is guilty of a misdemeanor.

**History:** 1968, Act 330, Imd. Eff. July 12, 1968;—Am. 1994, Act 326, Eff. Mar. 30, 1995;—Am. 2000, Act 411, Eff. Mar. 28, 2001;—Am. 2002, Act 473, Eff. Oct. 1, 2002.

**338.1069 Uniform and insignia; shoulder identification patches or emblems; badge or shield; deadly weapons; tactical baton.**

Sec. 19. (1) The particular type of uniform and insignia worn by a licensee or his or her employees must be approved by the department and shall not deceive or confuse the public or be identical with that of a law enforcement officer of the federal government, state, or a political subdivision of the state in the community of the license holder. Shoulder identification patches shall be worn on all uniform jackets, coats, and shirts and shall include the name of the licensee or agency. Shoulder identification patches or emblems shall not be less than 3 inches by 5 inches in size.

(2) A badge or shield shall not be worn or carried by a security alarm system agent, private security police officer, private college security force officer, or an employee or licensee of a security alarm system contractor, private security police organization, private college security force, or private security guard agency, unless approved by the director of the department.

(3) A person who is not employed as a security guard shall not display a badge or shield or wear a uniform of a security guard. A person who violates this subsection is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00, or both.

(4) A person licensed as a security alarm system contractor, security alarm system agent, or a private security guard or agency is not authorized to carry a deadly weapon unless he or she is licensed to do so in accordance with the laws of this state.



(5) A licensee may authorize his or her employees to carry any commercially available tactical baton.

**History:** 1968, Act 330, Imd. Eff. July 12, 1968;—Am. 1975, Act 190, Imd. Eff. Aug. 5, 1975;—Am. 2000, Act 411, Eff. Mar. 28, 2001;—Am. 2002, Act 473, Eff. Oct. 1, 2002;—Am. 2010, Act 68, Imd. Eff. May 13, 2010.

### **338.1070 Confidentiality of information; false reports, penalty.**

Sec. 20. (1) Any person who is or has been an employee of a licensee shall not divulge to anyone other than his employer or former employer, or as the employer shall direct, except as he may be required by law, any information acquired by him during his employment in respect to any of the work to which he shall have been assigned by the employer. Any employee violating the provisions of this section and any employee who wilfully makes a false report to his employer in respect to any work is guilty of a misdemeanor.

(2) Any manager, executive or employee of a licensee who wilfully sells, divulges or otherwise discloses information to other than clients, except as he may be required by law, any information acquired by him or them during employment by the client is guilty of a misdemeanor, and shall be subjected to immediate suspension of license by the department and revocation of license upon satisfactory proof of the offense to the department.

**History:** 1968, Act 330, Imd. Eff. July 12, 1968.

### **338.1071 Violations of act; report of convictions.**

Sec. 21. The prosecuting attorney of the county in which any conviction for a violation of any provision of this act shall, within 10 days thereafter, make and file with the department a report showing the date of such conviction, the name of the person convicted and the nature of the charge.

**History:** 1968, Act 330, Imd. Eff. July 12, 1968.

### **338.1072 Advertising.**

Sec. 22. (1) Every advertisement by a licensee soliciting or advertising for business shall contain his or her business name and address as they appear in the records of the department.

(2) A licensee shall, upon notice from and order of the department, discontinue any advertising or the use of any advertisement, seal, or card that, in the opinion of the department, may tend to mislead the public. Failure to comply with any such order of the department is cause for revocation or suspension of the license.

(3) A person not licensed under this act who advertises his or her business to be that of a private security guard or security alarm agency, irrespective of the name or title actually used, is guilty of a misdemeanor punishable by imprisonment for not more than 93 days, a fine of not more than \$1,000.00, or both.

**History:** 1968, Act 330, Imd. Eff. July 12, 1968;—Am. 2000, Act 411, Eff. Mar. 28, 2001.

### **338.1073 Trade names; approval.**

Sec. 23. No licensee shall use any designation or trade name which has not been first approved by the department, nor shall any licensee use any designation or trade name which implies any association with any municipal, county or state government or the federal government, or agency thereof.

**History:** 1968, Act 330, Imd. Eff. July 12, 1968.

### **338.1074 Compliance with labor laws.**

Sec. 24. Each sole proprietorship, partnership, firm, limited liability company, or corporation licensed and operating under the provisions of this act where there is an employer-employee relationship must comply with the state and federal laws applicable and must make written records and reports in accordance with the applicable state and federal laws.

**History:** 1968, Act 330, Imd. Eff. July 12, 1968;—Am. 2002, Act 473, Eff. Oct. 1, 2002.

### **338.1075 Renewal license; application; bond; fee; date; form; approval; effect of failure to renew; deposit of fees into security business fund.**

Sec. 25. (1) Subject to section 9(5), a license granted under this act may be renewed by the department upon application by the licensee, filing a renewal surety bond in the amount specified in section 9, and the payment of a renewal fee of \$100.00 if a sole proprietorship, \$150.00 if a private security police organization, a private college police force, or a private security guard firm, company, partnership, limited liability company, or corporation, or \$250.00 if a security alarm system contractor.

(2) A renewal license shall be dated as of the expiration date of the previously existing license. For the renewal of a license, the licensee shall submit an application in a form provided by the department. The department may defer the renewal of license if there is an uninvestigated outstanding criminal complaint pending against the licensee or a criminal case pending in any court against the licensee.

(3) A person who fails to renew a license on or before the expiration date shall not engage in activities

regulated by this act. A person who fails to renew a license on or before the expiration date may, within 30 days after the expiration date, renew the license by payment of the required license fee and a late renewal fee of \$25.00. An applicant who fails to renew within the 30-day period must reapply for a license under section 7.

(4) The fees collected by the department under this section shall be deposited into the security business fund created in section 9(9).

**History:** 1968, Act 330, Imd. Eff. July 12, 1968;—Am. 1975, Act 190, Imd. Eff. Aug. 5, 1975;—Am. 2000, Act 411, Eff. Mar. 28, 2001;—Am. 2002, Act 473, Eff. Oct. 1, 2002;—Am. 2004, Act 270, Imd. Eff. July 23, 2004;—Am. 2010, Act 68, Imd. Eff. May 13, 2010.

### **338.1076 Continuation of business upon death of licensee; notice; sale of business.**

Sec. 26. Upon the death of an individual licensed under this act, the business with which the decedent was connected may be carried on for a period of 90 days by the following: (a) In the case of an individual licensee, the surviving spouse, or if there be none, the executor or administrator of the estate of the decedent; (b) In the case of a partner, the surviving partners; (c) In the case of an officer of a firm, company, association, organization, or corporation, the officers thereof. Within 10 days following the death of a licensee, the department shall be notified in writing. The notification shall state the name of the person legally authorized to carry on the business of the deceased.

Upon the authorization of the department, the business may be carried on for a further period of time when necessary to complete any business commitments pending at the death of the decedent.

Nothing in this section shall be construed to restrict the sale of an alarm system business or a private security guard agency, if the vendee qualifies for a license under the provisions of this act.

**History:** 1968, Act 330, Imd. Eff. July 12, 1968;—Am. 1975, Act 190, Imd. Eff. Aug. 5, 1975.

### **338.1077 Departmental agents; employment, powers, rules and regulations.**

Sec. 27. The department may employ such agents as are necessary to carry out the provisions of this act and to enforce compliance therewith. The department and each agent employed by him, in respect to violations of any of the provisions of this act, has all the powers of a peace officer. All rules and regulations of the department shall be made in accordance with the provisions of Act No. 88 of the Public Acts of 1943, as amended, being sections 24.71 to 24.80 of the Compiled Laws of 1948, and subject to Act No. 197 of the Public Acts of 1952, as amended, being sections 24.101 to 24.110 of the Compiled Laws of 1948.

**History:** 1968, Act 330, Imd. Eff. July 12, 1968.

**Administrative rules:** R 28.4001 et seq. of the Michigan Administrative Code.

### **338.1078 Repealed. 2000, Act 411, Eff. Mar. 28, 2001.**

**Compiler's note:** The repealed section pertained to licensing of existing businesses.

### **338.1079 Licensure of private security police; rules; applicability of act to private security guards and police; use of pistols.**

Sec. 29. (1) The licensure of private security police and private college security forces shall be administered by the department of state police. The application, qualification, and enforcement provisions under this act apply to private security police and private college security forces except that the administration of those provisions shall be performed by, and the payment of the appropriate fees shall be paid to, the department of state police. The director of the department may jointly promulgate rules with the department of state police under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to facilitate the bifurcation of authority described in this subsection.

(2) This act does not require licensing of any private security guards employed for the purpose of protecting the property and employees of their employer and generally maintaining security for their employer. However, any person, firm, limited liability company, business organization, educational institution, or corporation maintaining a private security police organization or a private college security force may voluntarily apply for licensure under this act. When a private security police employer or private college security force employer as described in this section provides the employee with a pistol for the purpose of protecting the property of the employer, the pistol shall be considered the property of the employer and the employer shall retain custody of the pistol, except during the actual working hours of the employee. All such private security people shall be subject to the provisions of sections 17(1) and 19(1).

**History:** 1968, Act 330, Imd. Eff. July 12, 1968;—Am. 1969, Act 168, Imd. Eff. Aug. 5, 1969;—Am. 2000, Act 411, Eff. Mar. 28, 2001;—Am. 2002, Act 473, Eff. Oct. 1, 2002;—Am. 2010, Act 68, Imd. Eff. May 13, 2010.

**Constitutionality:** This act, which requires the licensing of guards, does not demonstrate the requisite degree of state action to bring

the activities of guards under color of state law so as to subject their activities to constitutional restraint and to require guards to give suspects warnings of their constitutional rights before eliciting inculpatory statements, and especially does not subject the activities of private police who are employed to protect the property and employees of their employer to constitutional restraint because such guards need not be licensed under the act. Grand Rapids v Impens, 414 Mich 667; 327 NW2d 278 (1982).

Participation by an off-duty deputy sheriff from another county, employed as a private guard, with other guards in the apprehension and detention of a shoplifting suspect did not provide a sufficient relationship so as to bring the activities of the guards under color of state law and require warnings of the suspect's constitutional rights before eliciting inculpatory statements by the suspect where the deputy did not obtain the statements and identified himself to the suspect only as a store employee. Grand Rapids v Impens, 414 Mich 667; 327 NW2d 278 (1982).

### **338.1080 Private security police officers; arrest powers; limitations.**

Sec. 30. A private security police officer, as described in section 29, who is properly licensed under this act has the authority to arrest a person without a warrant as set forth for public peace officers in section 15 of chapter IV of the code of criminal procedure, 1927 PA 175, MCL 764.15, when that private security police officer is on the employer's premises. Such authority is limited to his or her hours of employment as a private security police officer and does not extend beyond the boundaries of the property of the employer and while the private security police officer is in the full uniform of the employer.

**History:** Add. 1969, Act 168, Imd. Eff. Aug. 5, 1969;—Am. 2000, Act 411, Eff. Mar. 28, 2001.

### **338.1081 Training requirements.**

Sec. 31. An applicant for licensure as private security police under this act under section 29, or the employee of the applicant, shall comply with training requirements as prescribed by the department under this act.

**History:** Add. 1969, Act 168, Imd. Eff. Aug. 5, 1969;—Am. 2000, Act 411, Eff. Mar. 28, 2001;—Am. 2002, Act 473, Eff. Oct. 1, 2002.

### **338.1082 Violation of act; penalty.**

Sec. 32. Except as otherwise provided in this act, a licensee, manager, or employee of a licensee who violates this act is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days or by a fine of not more than \$1,000.00, or both.

**History:** Add. 1974, Act 113, Eff. July 1, 1974;—Am. 2000, Act 411, Eff. Mar. 28, 2001.

### **338.1083 Installation or operation of security alarm systems; requirements.**

Sec. 33. A security alarm system may not be installed or operated in this state unless the security alarm system is either installed by a security alarm system contractor licensed under this act or is installed by the owner or occupant of a residence in his or her residence.

**History:** Add. 1975, Act 190, Imd. Eff. Aug. 5, 1975;—Am. 2000, Act 411, Eff. Mar. 28, 2001.

### **338.1085 Repealed. 2000, Act 411, Eff. Mar. 28, 2001.**

**Compiler's note:** The repealed section pertained to false alarms.

### **338.1087 Applicability of section to private college security forces; authorization; action by governing board; designation of private college security officer; qualifications; rules; fee.**

Sec. 37. (1) This section and sections 38 to 42 apply only to private college security forces.

(2) Consistent with this act, a private college or university in this state that has students residing in college or university housing, through action of its governing board, may authorize a private college security force. The action of the governing board shall do all of the following:

- (a) Authorize a private college security force.
- (b) Authorize appointment of persons to be members of that private college security force.
- (c) Authorize the assignment of duties, including the enforcement of college or university regulations.
- (d) Prescribe the oath of office.
- (e) Limit employment to those individuals who meet the requirements of subsections (4), (5), (6), and (7) and section 40.

(3) A person appointed under subsection (2) shall be known and designated as a private college security officer and is fully empowered under this act as a private college security officer upon being appointed by a private college or university licensed under this act.

(4) Except as provided in subsection (7), private college security officers must meet the selection qualifications prescribed in R 28.14203, R 28.14204, and R 28.14209 of the Michigan administrative code, and must meet the standards and requirements applicable to at least 1 category of recruits as set forth in R 28.14313 (military preservice recruits), R 28.14314 (basic recruits), R 28.14315 (preservice recruits and

preservice college recruits), R 28.14316 (preservice college recruits), and R 28.14317 (agency basic recruits) of the Michigan administrative code, as promulgated by the commission.

(5) Private college security forces are subject to the provisions of R 28.14318, R 28.14319, and R 28.14320 of the Michigan administrative code, as promulgated by the commission.

(6) Except as provided in subsection (7), private college security officers may participate in the recognition of prior basic law enforcement training and experience program as prescribed in R 28.14401, R 28.14402, R 28.14403, R 28.14404, R 28.14405, R 28.14406, R 28.14407, R 28.14408, R 28.14409, R 28.14410, R 28.14413, and R 28.14414 of the Michigan administrative code, as promulgated by the commission.

(7) Subsections (4), (5), and (6) do not apply to an individual who meets all of the following requirements:

(a) He or she is employed as a security officer by a private college or university on the effective date of this act.

(b) He or she is certified as a law enforcement officer by the commission on the effective date of this act or was previously certified as a law enforcement officer by the commission while employed by the private college or university as a law enforcement officer but that certification became void during that period of employment.

(c) The private college or university authorizes the creation of a private college security force under this act.

(8) Investigations conducted to determine if a candidate for appointment as a private college security officer meets the selection qualifications, standards, and requirements in subsection (4) are governed by R 28.14601, R 28.14602, R 28.14603, R 28.14604, R 28.14606, R 28.14608, and R 28.14609 of the Michigan administrative code, as promulgated by the commission. This section shall not be interpreted to require the commission to conduct the investigation or review of an applicant for employment as a private college security officer.

(9) The governing board of a private college or university that creates a private college security force under this section may be subject to a fee payable to the commission under section 10(2) of the commission on law enforcement standards act, 1965 PA 203, MCL 28.610.

**History:** Add. 2010, Act 68, Imd. Eff. May 13, 2010.

### **338.1088 Creation of private college security force; approval of county prosecuting attorney, sheriff, and city police chief.**

Sec. 38. The governing board of a private college or university shall not create a private college security force under section 37 unless, before that security force is created, the governing board obtains the approval of the prosecuting attorney and the sheriff of each county within which the private college or university owns, maintains, or controls property. If the property of the private college or university is located entirely within 1 city, the governing board also shall obtain the approval of the chief of police of that city. If the property of the private college or university is not located entirely within 1 city, the governing board also shall obtain the approval of the chief of police of each city within which the private college or university owns, maintains, or controls property. Before granting approval, the prosecuting attorney, the sheriff, and the chief of police, as required, shall make a determination that the proposed private college security force is needed to assure adequate public safety on the property of the private college or university. Any of the persons whose approval is required under this section may rescind that approval at any time after his or her approval was granted, in which case the private college security force is no longer authorized and shall cease to operate.

**History:** Add. 2010, Act 68, Imd. Eff. May 13, 2010.

### **338.1089 Power to make arrests; limitation.**

Sec. 39. Upon being appointed under section 37 by a private college or university licensed under this act, private college security officers have the power to make arrests as provided in section 30. That power may be exercised only on property owned or leased by the private college or university wherever situated. Private college security officers are not certified as law enforcement officers under the commission on law enforcement standards act, 1965 PA 203, MCL 28.601 to 28.616.

**History:** Add. 2010, Act 68, Imd. Eff. May 13, 2010.

### **338.1090 Private college security force oversight committee.**

Sec. 40. The governing board of a private college or university shall not grant powers and authority to the private college security officers of the private college or university unless, before those powers and authority are granted, the governing board establishes a private college security force oversight committee. The committee shall be composed of the sheriff and the prosecuting attorney of the county in which the private college or university is located, the chief of police if the private college or university is located in a

municipality that has a police force, and 6 individuals appointed by the administration of the private college or university. The committee shall receive and address grievances by persons against the private college security officers or the private college security force of the private college or university. The committee may recommend to the governing board that disciplinary measures be taken by the private college or university against a private college security officer who is found responsible for misconduct in office.

**History:** Add. 2010, Act 68, Imd. Eff. May 13, 2010.

**338.1091 Participation in state, county, or municipal retirement system prohibited; uniforms, vehicles, and badges distinct from local law enforcement agency.**

Sec. 41. Members of the private college security force at a private college or university are not eligible to participate in any state, county, or municipal retirement system and shall not be reimbursed for training with state funds. The uniforms, vehicles, and badges of private college security officers shall be distinctive from those of the local law enforcement agency where the private college or university is located.

**History:** Add. 2010, Act 68, Imd. Eff. May 13, 2010.

**338.1092 Liability insurance.**

Sec. 42. The governing board of a private college or university that creates a private college security force shall provide liability insurance coverage for each member of the private college security force without cost to the member, which will insure the member against any liability arising out of or in the course of the member's employment for not less than \$250,000.00 of coverage, unless that indemnification is provided by a program of self-insurance.

**History:** Add. 2010, Act 68, Imd. Eff. May 13, 2010.

**PHARMACY  
Act 151 of 1962**

**338.1101-338.1131 Repealed. 1978, Act 11, Imd. Eff. Feb. 8, 1978;—1978, Act 368, Eff. Sept. 30, 1978.**

**NURSING PRACTICE ACT OF 1967  
Act 149 of 1967**

**338.1151-338.1175 Repealed. 1978, Act 368, Eff. Sept. 30, 1978.**

**NURSING HOME ADMINISTRATORS  
Act 166 of 1969**

**338.1181-338.1192 Repealed. 1975, Act 186, Imd. Eff. Aug. 2, 1975;—1980, Act 299, Imd. Eff. Oct. 21, 1980.**

**LANDSCAPE ARCHITECT ACT  
Act 126 of 1963**

**338.1201-338.1219 Repealed. 1980, Act 299, Imd. Eff. Oct. 21, 1980.**

**SANITARIAN'S REGISTRATION ACT  
Act 147 of 1963**

**338.1301-338.1315 Repealed. 1978, Act 368, Eff. Sept. 30, 1978.**

**PROFESSIONAL COMMUNITY PLANNERS ACT  
Act 218 of 1966**

**338.1351-338.1366 Repealed. 1980, Act 299, Imd. Eff. Oct. 21, 1980.**

**HOROLOGIST'S CERTIFICATION ACT  
Act 201 of 1965**

**338.1401-338.1414 Repealed. 1980, Act 299, Imd. Eff. Oct. 21, 1980.**

**HEARING AID DEALERS AND SALESMEN  
Act 265 of 1966**

**338.1451-338.1466 Repealed. 1980, Act 299, Imd. Eff. Oct. 21, 1980.**

**RESIDENTIAL BUILDERS, CONTRACTORS, AND SALESMEN  
Act 383 of 1965**

**338.1501-338.1519 Repealed. 1980, Act 299, Imd. Eff. Oct. 21, 1980.**

**BARBER LICENSING AND REGULATION ACT OF 1968  
Act 355 of 1968**

**338.1601-338.1665 Repealed. 1973, Act 113, Imd. Eff. Aug. 19, 1973;—1980, Act 299, Imd. Eff. Oct. 21, 1980.**



## FORENSIC POLYGRAPH EXAMINERS ACT

### Act 295 of 1972

AN ACT to license and regulate persons who purport to be able to detect deception, verify truthfulness, or provide a diagnostic opinion of either through the use of any device or instrumentation as lie detectors, forensic polygraphs, deceptographs, emotional stress meters or similar or related devices and instruments; to create a state board of forensic polygraph examiners with licensing and regulatory powers over all such persons and instruments; to provide for administrative proceedings and court review; to establish minimum standards and requirements for all such instrumentation or devices and to prohibit the use of instruments or devices which do not meet minimum standards and requirements; and to provide for injunctions and penalties.

**History:** 1972, Act 295, Eff. Mar. 30, 1973.

**Compiler's note:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

*The People of the State of Michigan enact:*

#### 338.1701 Short title.

Sec. 1. This act shall be known and may be cited as the “forensic polygraph examiners act”.

**History:** 1972, Act 295, Eff. Mar. 30, 1973.

**Compiler's note:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

For abolishment of the state board of forensic polygraph examiners and transfer of its powers and duties to the department of labor and economic growth, see E.R.O. No. 2007-18, compiled at MCL 445.2024.

#### 338.1702 Persons not exempted from act.

Sec. 2. A person who purports to be able to detect deception, or verify truthfulness through instrumentation, or who purports to offer or have available such services, shall not be held exempt from the provisions of this act because of the terminology which he may use to refer to himself, to his instrumentation or to his services.

**History:** 1972, Act 295, Eff. Mar. 30, 1973.

**Compiler's note:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

For abolishment of the state board of forensic polygraph examiners and transfer of its powers and duties to the department of labor and economic growth, see E.R.O. No. 2007-18, compiled at MCL 445.2024.

#### 338.1703 Definitions.

Sec. 3. As used in this act:

- (a) “Person” means any natural person, firm, association, partnership, or corporation.
- (b) “Examiner” means any person, other than an intern, who does any of the following:
  - (i) Purports to detect deception, verify truthfulness, or provide a diagnostic opinion of these matters through instrumentation or the use of a mechanical device.
  - (ii) Represents that he or she can or does offer the service of detecting deception, verifying truthfulness, or providing a diagnostic opinion of these matters through instrumentation or the use of a mechanical device.
  - (iii) Uses instrumentation or a mechanical device to measure or record an individual's bodily responses or psychophysiological activities to enable or assist the detection of deception, the verification of truthfulness, or the reporting of a diagnostic opinion regarding these matters.
- (c) “Intern” means a person who is actively engaged in an approved training program pursuant to becoming an examiner.
- (d) “Examinee” means an individual who is being examined, tested, or questioned by an examiner or intern for the purpose of detecting deception or verifying truthfulness.
- (e) “Board” means the state board of forensic polygraph examiners.
- (f) “Public examiner” means an examiner who performs or purports to perform the service of detecting deception or verifying truthfulness exclusively in his or her official capacity as a salaried employee of some agency, county, city, or township of this state.
- (g) “Private examiner” means an examiner who performs or purports to perform the service of detecting deception or verifying truthfulness in any instance or under any circumstance other than as a public examiner.
- (h) “Employer” means a person who employs 1 or more persons or who accepts applications for

employment of persons; or an agent of an employer.

**History:** 1972, Act 295, Eff. Mar. 30, 1973;—Am. 1982, Act 46, Eff. Mar. 30, 1983.

**Compiler's note:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

For abolishment of the state board of forensic polygraph examiners and transfer of its powers and duties to the department of labor and economic growth, see E.R.O. No. 2007-18, compiled at MCL 445.2024.

### **338.1704 Minimum standards for instruments or devices.**

Sec. 4. A person shall not use, or attempt to use any instrument or device for the purpose of detecting deception, verifying truthfulness or assisting in the reporting of a diagnostic opinion as to either of these unless such instrument or device, as minimum standards, shall be capable of recording visually, permanently and simultaneously indications of a person's cardiovascular pattern and changes therein, and a person's respiratory pattern and changes therein. Indications of other psychophysiological changes or bodily responses in addition may also be recorded. The operation, use or attempted use of any instrument or device for the purposes described which does not meet these minimum requirements shall be subject to penalties and may be enjoined as provided in this act.

**History:** 1972, Act 295, Eff. Mar. 30, 1973.

**Compiler's note:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

For abolishment of the state board of forensic polygraph examiners and transfer of its powers and duties to the department of labor and economic growth, see E.R.O. No. 2007-18, compiled at MCL 445.2024.

### **338.1705 State board of forensic polygraph examiners; creation; appointment, terms, and qualifications of members; vacancy.**

Sec. 5. (1) The state board of forensic polygraph examiners is created within the department of state police and shall consist of 5 members appointed by the governor with the advice and consent of the senate for terms of 4 years, except the terms of office for members of the initial board shall be 2 for 2 years and 3 for 4 years. Any vacancy in an unexpired term shall be filled by appointment of the governor with the advice and consent of the senate for the unexpired term.

(2) The members of the board shall be qualified as follows:

(a) At least 2 members of the board shall be public examiners employed by separate and distinct governmental law enforcement agencies who are at the time of appointment licensed or in the case of the initial board, who fulfill the requirements for examiner licenses under the provisions of this act. Each of these 2 members shall have at least 5 consecutive years of law enforcement experience and at least 2 consecutive years of experience administering polygraph examinations prior to their appointment.

(b) At least 2 members of the board shall be private examiners employed by separate and distinct persons or firms who are at the time of appointment licensed or in the case of the initial board, who fulfill the requirements for examiner licenses under the provisions of this act. Each of these 2 members shall have at least 5 consecutive years of experience administering polygraph examinations prior to their appointment.

(c) At least 1 member shall be a person who shall represent the public at large.

(d) Each member of the board shall be a citizen of the United States, a resident of the state for at least 2 years prior to appointment and at the time of initial appointment shall fulfill the age and educational requirements then in effect for examiner licensing under this act.

**History:** 1972, Act 295, Eff. Mar. 30, 1973.

**Compiler's note:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

For abolishment of the state board of forensic polygraph examiners and transfer of its powers and duties to the department of labor and economic growth, see E.R.O. No. 2007-18, compiled at MCL 445.2024.

**Transfer of powers:** see MCL 16.732.

### **338.1706 State board of forensic polygraph examiners; election of officers; conducting business at public meeting; notice of meeting; additional meetings; examinations for examiner's licenses; quorum; majority vote required; expenses; annual report; availability of report and other writings to public.**

Sec. 6. (1) The board shall meet not more than 30 days after it is constituted and elect from its members a chairperson, vice-chairperson and from its members, or otherwise, a secretary. The business which the board may perform shall be conducted at a public meeting of the board held in compliance with Act No. 267 of the

Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of the meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976.

(2) Additional meetings of the board shall be held at times and places as the board determines. The board shall specify dates spaced at no more than 6-month intervals on which examinations for examiner's licenses will be held. A majority of the members of the board constitutes a quorum, and the vote of a majority of the board members is sufficient for passage of any business or proposal which comes before the board. Members of the board shall be reimbursed for actual and necessary travel and other expenses incurred in performing official duties.

(3) The board shall make an annual report of its activities to the governor beginning with the fiscal year ending June 30, 1973. The report and other writings prepared, owned, used, in the possession of, or retained by the board in performance of an official function shall be made available to the public in compliance with Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

**History:** 1972, Act 295, Eff. Mar. 30, 1973;—Am. 1977, Act 206, Imd. Eff. Nov. 17, 1977.

**Compiler's note:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

For abolishment of the state board of forensic polygraph examiners and transfer of its powers and duties to the department of labor and economic growth, see E.R.O. No. 2007-18, compiled at MCL 445.2024.

### **338.1707 Rules; filing of applications; collection and disposition of fees; order as prima facie proof; appropriation of funds.**

Sec. 7. (1) The department shall promulgate rules consistent with the provisions of this act for the dissemination, retention and destruction of polygraph results to protect the general public for the administration and enforcement of this act pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. An application for an examination, license, renewal or other provisions under this act shall comply with the requirements of the department and board and shall be accompanied by the license fee, which is not returnable except by a showing of mistake, inadvertence, error in the collection of the fee, or pursuant to section 15(3).

(2) An order or a certified copy, over the board seal and purporting to be signed by the board members or board chair shall be prima facie proof of the following:

- (a) That the signatures are the genuine signatures of the board members or the board chair.
- (b) That the board members or the chair are duly appointed and qualified.
- (c) That the board and its members are fully qualified to act.

(3) All fees collected under this act shall be deposited to the credit of the general fund of the state. Funds necessary for the enforcement and administration of this act shall be appropriated by the legislature within the budget of the department of labor and economic growth.

**History:** 1972, Act 295, Eff. Mar. 30, 1973;—Am. 2004, Act 276, Imd. Eff. July 23, 2004.

**Compiler's note:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

For abolishment of the state board of forensic polygraph examiners and transfer of its powers and duties to the department of labor and economic growth, see E.R.O. No. 2007-18, compiled at MCL 445.2024.

**Administrative rules:** R 338.9001 et seq. of the Michigan Administrative Code.

### **338.1708 Activities requiring license.**

Sec. 8. A person, including city, county or state employees, shall not use or attempt to use any instrumentation or mechanical device for the purpose of detecting deception, verifying truthfulness or reporting a diagnostic opinion regarding either of these; purport to detect deception or verify truthfulness through instrumentation or mechanical devices; advertise or represent that he can or does offer the service of detecting deception, verifying truthfulness or reporting a diagnostic opinion regarding an individual's deception or truthfulness through instrumentation or mechanical devices; attempt to hold himself out as a polygraph examiner or refer to himself by any terminology which would indicate or convey the impression that he can or does purport to detect deception or verify truthfulness through instrumentation; or use any of the technical descriptive terminology peculiar to, or interchangeable with, the administration of polygraph examinations, the interpretation thereof or the detection of deception and the verification of truthfulness resulting therefrom without first securing a license as provided in this act.

**History:** 1972, Act 295, Eff. Mar. 30, 1973.

**Compiler's note:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

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of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

For abolishment of the state board of forensic polygraph examiners and transfer of its powers and duties to the department of labor and economic growth, see E.R.O. No. 2007-18, compiled at MCL 445.2024.

### **338.1709 Examiner's license; issuance without examination; conditions and qualifications.**

Sec. 9. A person upon application to the board dated within 1 year after the effective date of this act, and upon payment of the required license fee, shall be issued an examiner's license hereunder, without examination, if he satisfies the registration requirements established by the board and satisfies the board by affidavit or otherwise that he is qualified as follows:

(a) He has either 1 of the following:

(i) He has actually engaged in the occupation, profession or practice as an examiner prior to January 1, 1969, and continuously since that time, utilizing exclusively during that period instrumentation which satisfies the requirements of section 4.

(ii) He has actually engaged in an internship training program, or similar arrangement on a full-time basis prior to the effective date of this act or has satisfactorily completed such internship training program or similar arrangement and has engaged in the occupation, profession or practice as an examiner or intern prior to the effective date of this act, utilizing exclusively during that period instrumentation which satisfies the requirements of section 4.

(b) He substantially fulfills the requirements for licensing as set forth in section 10. The board may issue temporary examiner's licenses to an applicant who otherwise qualifies under section 10 except for the time and experience factors set forth in section 10 to enable the fulfillment of these requirements by the applicant.

**History:** 1972, Act 295, Eff. Mar. 30, 1973.

**Compiler's note:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

For abolishment of the state board of forensic polygraph examiners and transfer of its powers and duties to the department of labor and economic growth, see E.R.O. No. 2007-18, compiled at MCL 445.2024.

### **338.1710 Examiner's license; qualifications.**

Sec. 10. (1) Upon application and payment of the required fee, a person fulfilling the following is qualified to receive a license as an examiner:

(a) Is at least 18 years of age.

(b) Is a citizen of the United States.

(c) Has not been under sentence for the commission of a felony within 5 years prior to his or her application, including parole, probation, or actual incarceration.

(d) Has either 1 of the following, subject to subsection (2):

(i) An academic degree, at least at the baccalaureate level, from an accredited college or university, with an academic degree to include specialized study in 1 academic major, or 2 academic minor areas that the department determines to be suitable for and related to specialization as an examiner.

(ii) A high school diploma or its equivalent from an accredited high school and at least 5 years of continuous investigative experience with a recognized governmental law enforcement or governmental investigative agency.

(e) Has either 1 of the following:

(i) Has satisfactorily completed an internship training program approved by the department.

(ii) Satisfies the department that he or she has training or experience equivalent to an internship training program described in subparagraph (i).

(f) Furnishes the department with satisfactory proof that he or she has suitable experience in the personal administration of polygraph examinations during an internship, or its equivalent.

(g) Furnishes the department with a completed fingerprint card, bearing the applicant's fingerprints and such other identifying information or certification as to their authenticity as the department may reasonably require and arranges for the conduct of a criminal history check that fails to demonstrate ineligibility under this section. The department shall submit the applicant's fingerprints along with the appropriate state and federal fees to the department of state police for a criminal history check. The department of state police may then forward the fingerprints to the federal bureau of investigation for a criminal history check. The fee shall be paid by the applicant and shall accompany the submission of the fingerprints to the department. The information obtained as a result of the criminal history check of an applicant shall be limited to officially determining the character and fitness of the applicant for licensing purposes.

(h) Has not previously had an examiner's license, or its equivalent, refused, revoked, suspended or otherwise invalidated for a reason that would also represent lawful grounds for revoking or denying

applicant's license under this act.

(i) Upon reasonable investigation, satisfies the department that no substantial derogatory information exists regarding applicant's loyalty, honesty, or integrity as would reasonably and prudently justify denying him or her a license.

(j) Has continuously resided in this state or has been continuously eligible to apply for an absentee voter's ballot for the general elections in this state for at least 6 calendar months immediately before the date of the application; or any combination of these 2 requirements that totals at least 6 calendar months.

(k) Has satisfactorily passed required qualifying examinations conducted by the department, or under its supervision, to determine his or her competency to obtain a license to practice as an examiner, except that the applicant first shall have satisfied all the other requirements in this section before taking such a qualifying examination.

(2) All applicants shall have received an academic degree, at least at the baccalaureate level, from an accredited college or university, with such academic degree to include specialized study in 1 academic major, or 2 academic minor areas that the department determines to be suitable for and related to specialization as an examiner.

**History:** 1972, Act 295, Eff. Mar. 30, 1973;—Am. 2005, Act 2, Imd. Eff. Apr. 1, 2005.

**Compiler's note:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

For abolishment of the state board of forensic polygraph examiners and transfer of its powers and duties to the department of labor and economic growth, see E.R.O. No. 2007-18, compiled at MCL 445.2024.

### **338.1711 Intern's license; qualifications.**

Sec. 11. A person is qualified to receive a license as an intern who satisfies the board that he is engaging in an approved internship training program and that he substantially fulfills the basic requirements of this act for licensing as an examiner. The applicant shall not be required to fulfill the experience or residence requirements in subdivisions (e), (f) and (j) of section 10 in qualifying for an intern's license.

**History:** 1972, Act 295, Eff. Mar. 30, 1973.

**Compiler's note:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

For abolishment of the state board of forensic polygraph examiners and transfer of its powers and duties to the department of labor and economic growth, see E.R.O. No. 2007-18, compiled at MCL 445.2024.

### **338.1712 Temporary examiner's license; qualifications.**

Sec. 12. A person is entitled to receive a temporary examiner's license who fulfills the requirements of the board for such licensing and who satisfies the board that he is either 1 of the following:

(a) That he qualifies under section 9.

(b) That he does not meet the residence requirements set forth in section 10 but does substantially fulfill all the other qualifications for licensing as an examiner under this act.

**History:** 1972, Act 295, Eff. Mar. 30, 1973.

**Compiler's note:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

For abolishment of the state board of forensic polygraph examiners and transfer of its powers and duties to the department of labor and economic growth, see E.R.O. No. 2007-18, compiled at MCL 445.2024.

### **338.1713 Irrevocable consent by nonresident applicant to service of process.**

Sec. 13. A nonresident applicant for an intern's license or a temporary examiner's license shall file an irrevocable consent that actions against the applicant may be filed in any appropriate court in any county of this state in which the plaintiff resides or in which some part of the transaction occurred out of which the alleged cause of action arose and that process in any action may be served on the applicant by leaving 2 copies thereof with the board. The consent shall stipulate and agree that such service of process shall be taken and held to be valid and binding for all purposes. The board secretary shall send 1 copy of the process to the applicant at the address shown on the records of the board by registered or certified mail.

**History:** 1972, Act 295, Eff. Mar. 30, 1973.

**Compiler's note:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

For abolishment of the state board of forensic polygraph examiners and transfer of its powers and duties to the department of labor and economic growth, see E.R.O. No. 2007-18, compiled at MCL 445.2024.



### **338.1714 Reciprocity.**

Sec. 14. An applicant who is an examiner, licensed under the laws of another state or territory of the United States, may be issued appropriate license without examination by the board upon payment of the required fee and the production of satisfactory proof:

(a) That the requirements for the licensing of examiners in such particular state or territory of the United States were at the date of licensing substantially equivalent to the requirements currently in force in this state to the satisfaction of the board.

(b) That any requirements currently in force for the licensing of examiners in this state significantly differing from or in addition to the requirements for the licensing of examiners in such particular state or territory of the United States are fulfilled by the applicant to the satisfaction of the board.

(c) That such other state or territory grants similar reciprocity to license holders of this state.

**History:** 1972, Act 295, Eff. Mar. 30, 1973.

**Compiler's note:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

For abolishment of the state board of forensic polygraph examiners and transfer of its powers and duties to the department of labor and economic growth, see E.R.O. No. 2007-18, compiled at MCL 445.2024.

### **338.1715 Fees; receipt of completed application; time period for issuance of license; report; "completed application" defined.**

Sec. 15. (1) The fees to accompany applications under this act are as follows:

(a) Private examiner's license, original, \$100.00; renewal, \$50.00.

(b) Public examiner's license, original, \$25.00; renewal, \$25.00.

(c) Temporary examiner's license, original and renewal:

(i) Residents applying under section 9, private examiners, \$100.00; public examiners, \$25.00.

(ii) Nonresidents, 10-day license, \$100.00; annual license, original and renewal, \$200.00.

(d) Intern's license, original and renewal, \$25.00.

(e) Duplication or alteration of license, \$5.00.

(f) Reinstatement fee, \$25.00.

(g) Licensing examination fee, \$50.00.

(2) Beginning the effective date of the amendatory act that added this subsection, the department shall issue an initial or renewal license not later than 90 days after the applicant files a completed application. Receipt of the application is considered the date the application is received by any agency or department of the state of Michigan. If the application is considered incomplete by the department, the department shall notify the applicant in writing, or make the information available electronically, within 30 days after receipt of the incomplete application, describing the deficiency and requesting the additional information. The 90-day period is tolled upon notification by the department of a deficiency until the date the requested information is received by the department. The determination of the completeness of an application does not operate as an approval of the application for the license and does not confer eligibility of an applicant determined otherwise ineligible for issuance of a license.

(3) If the department fails to issue or deny a license within the time required by this section, the department shall return the license fee and shall reduce the license fee for the applicant's next renewal application, if any, by 15%. The failure to issue a license within the time required under this section does not allow the department to otherwise delay the processing of the application, and that application, upon completion, shall be placed in sequence with other completed applications received at that same time. The department shall not discriminate against an applicant in the processing of the application based upon the fact that the license fee was refunded or discounted under this subsection.

(4) Beginning October 1, 2005, the director of the department shall submit a report by December 1 of each year to the standing committees and appropriations subcommittees of the senate and house of representatives concerned with occupational issues. The director shall include all of the following information in the report concerning the preceding fiscal year:

(a) The number of initial and renewal applications the department received and completed within the 90-day time period described in subsection (2).

(b) The number of applications denied.

(c) The number of applicants not issued a license within the 90-day time period and the amount of money returned to licensees and registrants under subsection (3).

(5) As used in this section, "completed application" means an application complete on its face and submitted with any applicable licensing fees as well as any other information, records, approval, security, or



similar item required by law or rule from a local unit of government, a federal agency, or a private entity but not from another department or agency of the state of Michigan.

**History:** 1972, Act 295, Eff. Mar. 30, 1973;—Am. 2004, Act 276, Imd. Eff. July 23, 2004.

**Compiler's note:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

For abolishment of the state board of forensic polygraph examiners and transfer of its powers and duties to the department of labor and economic growth, see E.R.O. No. 2007-18, compiled at MCL 445.2024.

### **338.1716 Duration of licenses.**

Sec. 16. Licenses shall be issued for terms as follows:

(a) Temporary examiner's licenses issued to applicants who qualify under section 9 and examiner's licenses shall be issued for the term of 1 calendar year, or such portion thereof as remains at the time issued. Each license shall be renewed during the month of December of each year. A license not renewed shall expire at midnight on December 31. A license which has expired may be renewed in accordance with the requirements of the board and payment of the required fee.

(b) Temporary examiner's licenses issued to persons who do not satisfy the residence requirements in section 10 shall be issued for a specific term as determined by the fee paid and may be renewed in accordance with the requirements of the board.

(c) Intern licenses shall be issued for the term of 6 calendar months and may be renewed for additional 6-month terms, if the intern satisfies the requirements of the board regarding the internship.

**History:** 1972, Act 295, Eff. Mar. 30, 1973.

**Compiler's note:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

For abolishment of the state board of forensic polygraph examiners and transfer of its powers and duties to the department of labor and economic growth, see E.R.O. No. 2007-18, compiled at MCL 445.2024.

### **338.1717 Specific requirements as to licenses.**

Sec. 17. The board shall establish requirements for the form, issuance, display, change of address notification, surrender and evidence of licenses.

**History:** 1972, Act 295, Eff. Mar. 30, 1973.

**Compiler's note:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

For abolishment of the state board of forensic polygraph examiners and transfer of its powers and duties to the department of labor and economic growth, see E.R.O. No. 2007-18, compiled at MCL 445.2024.

### **338.1718 Renewal of examiner's license.**

Sec. 18. The license of an examiner which has not been revoked or is not suspended shall be renewed annually upon application and payment of the required fee by the examiner.

**History:** 1972, Act 295, Eff. Mar. 30, 1973.

**Compiler's note:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

For abolishment of the state board of forensic polygraph examiners and transfer of its powers and duties to the department of labor and economic growth, see E.R.O. No. 2007-18, compiled at MCL 445.2024.

### **338.1719 Refusal to issue or suspension or revocation of license; grounds.**

Sec. 19. The board may refuse to issue a license, or may suspend or revoke a license on 1 or more of the following grounds, if the holder or applicant for a license has:

(a) Made a material misstatement in the application for a license or in the application for a renewal license.

(b) Disregarded or violated this act or any rule promulgated pursuant to this act.

(c) Been convicted of a felony; a misdemeanor punishable by more than 1 year imprisonment; or any crime involving moral turpitude including, but not limited to, dishonesty or fraud, or unauthorized divulging or selling of information or evidence.

(d) Made a misrepresentation or false promise or caused to be printed any false or misleading advertisement for the purpose of directly or indirectly obtaining business or interns.

(e) Demonstrated unworthiness or incompetency to act as an examiner or intern in a manner as to affect the interests of the public.

(f) Allowed his or her license to be used by an unlicensed person in violation of this act.

- (g) Aided or abetted another in the violation of this act or of any rule promulgated pursuant to this act.
- (h) Been adjudged mentally ill, mentally deficient, or in need of mental treatment.
- (i) Failed, within a reasonable time, to provide information requested by the board as the result of a formal complaint in writing to the board, or as the result of substantive information otherwise received by the board which would reasonably indicate a violation of this act, or any rules promulgated pursuant to this act.
- (j) Asked test questions during a polygraph examination regarding the examinee's sexual practices, labor union, political, or religious affiliations, or his or her marital relationship, except where such questions have a bearing on the areas or issues under examination.
- (k) Failed to inform the examinee of all specific question areas to be explored prior to their actual exploration during the examination.
- (l) Conducted an examination without having informed the examinee of all of the following:
  - (i) The examinee has the right to refuse or accept the examination.
  - (ii) The examinee cannot be discharged from employment solely because he or she so refuses or accepts the examination.
  - (iii) The examinee cannot be denied employment solely because he or she so refuses or accepts the examination.
  - (iv) The examinee has the right to halt an examination in progress at any time.
  - (v) The examinee is not required to answer any questions or give any information.
  - (vi) Any information that the examinee volunteers could be used against him or her, or made available to the party requesting the examination, unless otherwise specified and agreed to in writing.
- (m) Conducted an examination that he or she knew or should have known violated the polygraph protection act of 1981.

**History:** 1972, Act 295, Eff. Mar. 30, 1973;—Am. 1982, Act 46, Eff. Mar. 30, 1983.

**Compiler's note:** In subdivision (j), "marital" evidently should read "marital".

For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

For abolishment of the state board of forensic polygraph examiners and transfer of its powers and duties to the department of labor and economic growth, see E.R.O. No. 2007-18, compiled at MCL 445.2024.

### **338.1720 Investigating actions of applicant or licensee; motion or complaint; notice or charges; service of notice; hearing; evidence; continuance; location of hearing; closed hearing; request for public hearing.**

Sec. 20. The board upon its own motion and, upon the verified complaint in writing of a person setting forth facts which, if proved, would constitute grounds for denial, suspension, or revocation of a license under this act, shall investigate the actions of an applicant or a person holding or claiming to hold a license. Before denial, suspension, or revocation of a license, and not less than 20 days before the date set for the hearing, the board shall notify the applicant or the holder of a license, in writing, of the nature of the charges and that a hearing will be held on the date designated. The hearing shall determine whether the applicant or holder, called the respondent in this section, may hold the license, and shall afford the respondent an opportunity to be heard in person or by counsel. A written notice may be served by personal delivery to the respondent or by mailing by registered mail with return receipt requested at the address of respondent's last notification to the board. At the time and place fixed in the notice, the board shall hear the charges and both the respondent and complainant shall be accorded ample opportunity to present in person or by counsel statements, testimony, evidence, and arguments as may be pertinent to the charges or to the defense to the charges. The board may continue the hearing from time to time. If the board is not sitting at the time and place fixed in the notice or at the time and place to which the hearing is continued, the board shall continue the hearing for a period not to exceed 30 days. The board for good cause may continue the hearing for longer periods upon stipulation of both parties. All hearings shall be held at locations designated by the board and approved by the director of the department of state police. All hearings shall be closed hearings as authorized by section 8 of Act No. 267 of the Public Acts of 1976, being section 15.268 of the Michigan Compiled Laws, unless the respondent personally, or through counsel, submits a written request for a public hearing.

**History:** 1972, Act 295, Eff. Mar. 30, 1973;—Am. 1977, Act 206, Imd. Eff. Nov. 17, 1977.

**Compiler's note:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

For abolishment of the state board of forensic polygraph examiners and transfer of its powers and duties to the department of labor and economic growth, see E.R.O. No. 2007-18, compiled at MCL 445.2024.

### **338.1721 Surrender or seizure of license.**

Sec. 21. Upon the revocation or suspension of a license, the licensee shall surrender the license to the board and if the licensee fails to do so, the board may seize it.

**History:** 1972, Act 295, Eff. Mar. 30, 1973.

**Compiler's note:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

For abolishment of the state board of forensic polygraph examiners and transfer of its powers and duties to the department of labor and economic growth, see E.R.O. No. 2007-18, compiled at MCL 445.2024.

### **338.1722 Reinstatement of license.**

Sec. 22. Any time after suspension or revocation of a license, it may be reinstated at the discretion of the board, upon application and payment of the required fee.

**History:** 1972, Act 295, Eff. Mar. 30, 1973.

**Compiler's note:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

For abolishment of the state board of forensic polygraph examiners and transfer of its powers and duties to the department of labor and economic growth, see E.R.O. No. 2007-18, compiled at MCL 445.2024.

### **338.1723 Transcripts and records of proceedings before board; motion for rehearing.**

Sec. 23. (1) The board shall provide for the transcribing and recording of all proceedings before the board and shall furnish a transcript of the record to any party affected by the proceedings upon payment of the costs for the transcript.

(2) In any case involving the denial, suspension or revocation of a license, a copy of the board's report shall be served upon the respondent by the board, either personally or by registered or certified mail as provided in this act for service of notice of hearing. Within 20 days after such service, the respondent may present to the board a motion in writing for rehearing, which written motion shall specify the particular grounds therefor. If a motion for rehearing is not filed, then upon expiration of the time specified for filing such motion; or if a motion for rehearing is denied, then upon such denial, the secretary shall enter an order in accordance with recommendations of the board. If the respondent orders and pays for a transcript of the record within the time for filing a motion for rehearing, the 20-day period within which a motion may be filed shall commence upon the delivery of the transcript to the respondent.

**History:** 1972, Act 295, Eff. Mar. 30, 1973.

**Compiler's note:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

For abolishment of the state board of forensic polygraph examiners and transfer of its powers and duties to the department of labor and economic growth, see E.R.O. No. 2007-18, compiled at MCL 445.2024.

### **338.1724 Review.**

Sec. 24. A person affected by a final administrative decision of the board may have such decision reviewed in accordance with the provisions of law.

**History:** 1972, Act 295, Eff. Mar. 30, 1973.

**Compiler's note:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

For abolishment of the state board of forensic polygraph examiners and transfer of its powers and duties to the department of labor and economic growth, see E.R.O. No. 2007-18, compiled at MCL 445.2024.

### **338.1725 Witnesses; documents.**

Sec. 25. A circuit judge upon application of the board or of the person against whom proceedings under sections 4, 7, 8, 17 or 19 are pending, may enter an order requiring the attendance of witnesses and their testimony and the production of documents, papers, files, books and records in connection with any hearing in any proceedings under those sections. The judge may compel obedience to this order by proceedings for contempt.

**History:** 1972, Act 295, Eff. Mar. 30, 1973.

**Compiler's note:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

For abolishment of the state board of forensic polygraph examiners and transfer of its powers and duties to the department of labor and economic growth, see E.R.O. No. 2007-18, compiled at MCL 445.2024.

### **338.1726 Repealed. 1982, Act 46, Eff. Mar. 30, 1983.**

**Compiler's note:** The repealed section pertained to prohibitions and conditions regarding polygraph examinations.

### **338.1726a Administration of test by examiner or intern in violation of polygraph protection act of 1981; misdemeanor; penalty; liability to employee or applicant.**

Sec. 26a. (1) An examiner or intern shall not administer a polygraph examination, lie detector test, psychological stress evaluation, or similar test to an employee or applicant for employment that violates the polygraph protection act of 1981.

(2) An examiner or intern who violates this section is guilty of a misdemeanor punishable by a fine of not more than \$1,000.00, or by imprisonment for not more than 90 days, or both.

(3) An examiner or intern who violates this section may be liable to the employee or applicant for employment for damages and for costs and statutory attorney fees.

**History:** Add. 1982, Act 46, Eff. Mar. 30, 1983.

**Compiler's note:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

For abolishment of the state board of forensic polygraph examiners and transfer of its powers and duties to the department of labor and economic growth, see E.R.O. No. 2007-18, compiled at MCL 445.2024.

### **338.1727 Injunction.**

Sec. 27. If any person violates the provisions of this act, the board, in the name of the people of the state, through the attorney general, may apply to a court of competent jurisdiction for an order enjoining the violation or for an order enforcing compliance with this act. Upon the filing of a verified petition in the court, the court or any judge thereof, if satisfied by affidavit or otherwise that such person has violated or is violating this act may issue a temporary injunction, without notice or bond, enjoining the continued violation. If it is established that the person has violated or is violating the injunction, the court or any judge thereof may summarily try and punish the offender for contempt of court. Proceedings under this section shall be in addition to, and not in lieu of, all other remedies and penalties provided by this act.

**History:** 1972, Act 295, Eff. Mar. 30, 1973.

**Compiler's note:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

For abolishment of the state board of forensic polygraph examiners and transfer of its powers and duties to the department of labor and economic growth, see E.R.O. No. 2007-18, compiled at MCL 445.2024.

### **338.1728 Unlawful disclosures; exceptions.**

Sec. 28. (1) Any person who is or has been an employee of a licensed examiner shall not divulge to anyone other than his employer or former employer, or as the employer shall direct, except as he may be required by law, any information acquired by him during his employment in respect to any of the work to which he shall have been assigned by the employer. Any employee violating the provisions of this section and any employee who makes a false report to his employer in respect to any work is guilty of a misdemeanor.

(2) Any principal, manager or employee of a licensed examiner who furnishes false information to clients, or who sells, divulges or otherwise discloses to other than clients, except as he may be required by law, any information acquired by him or them during employment by the client is guilty of a misdemeanor, and shall be subjected to immediate suspension of license by the board and revocation of license upon satisfactory proof of the offense. Any communications, oral or written, furnished by a professional man or client to a licensed examiner, or any information secured in connection with an assignment for a client, shall be deemed privileged with the same authority and dignity as are other privileged communications recognized by the courts of this state.

(3) Any recipient of information, report or results from a polygraph examiner, except for the person tested, shall not provide, disclose or convey such information, report or results to a third party except as may be required by law and the rules promulgated by the board in accordance with section 7 of this act.

**History:** 1972, Act 295, Eff. Mar. 30, 1973.

**Compiler's note:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

For abolishment of the state board of forensic polygraph examiners and transfer of its powers and duties to the department of labor and economic growth, see E.R.O. No. 2007-18, compiled at MCL 445.2024.

### **338.1729 Violations; penalties.**

Sec. 29. (1) Except as provided in subsections (2) and (3), a person violating this act or falsely stating or representing that he or she is or has been an examiner or intern is guilty of a misdemeanor.

(2) A member of the board who intentionally violates section 6(1) shall be subject to the penalties prescribed in Act No. 267 of the Public Acts of 1976.

(3) If the board arbitrarily and capriciously violates section 6(3), the board shall be subject to the penalties prescribed in Act No. 442 of the Public Acts of 1976.

**History:** 1972, Act 295, Eff. Mar. 30, 1973;—Am. 1977, Act 206, Imd. Eff. Nov. 17, 1977.

**Compiler's note:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

For abolishment of the state board of forensic polygraph examiners and transfer of its powers and duties to the department of labor and economic growth, see E.R.O. No. 2007-18, compiled at MCL 445.2024.

## **SOCIAL WORKERS**

### **Act 352 of 1972**

**338.1751-338.1766 Repealed. 1980, Act 299, Imd. Eff. Oct. 21, 1980.**

## **MEDICAL PRACTICE ACT**

### **Act 185 of 1973**

**338.1801-338.1827 Repealed. 1978, Act 368, Eff. Sept. 30, 1978.**

## **MASSAGE**

### **Act 251 of 1974**

**338.1851-338.1868 Repealed. 1980, Act 299, Imd. Eff. Oct. 21, 1980.**

## **ADVANCED EMERGENCY MEDICAL TECHNICIAN PRACTICES ACT**

### **Act 275 of 1974**

**338.1901-338.1913 Repealed. 1976, Act 290, Eff. Mar. 31, 1977.**

## **EMERGENCY PERSONNEL ACT**

### **Act 290 of 1976**

**338.1921-338.1938 Repealed. 1978, Act 368, Eff. Sept. 30, 1978.**

## **PHYSICIAN'S ASSISTANTS ACT**

### **Act 420 of 1976**

**338.1951-338.1978 Repealed. 1978, Act 368, Eff. Sept. 30, 1978.**

## **PRIVATE EMPLOYMENT BUREAU LICENSING ACT**

### **Act 301 of 1974**

**338.2001-338.2060 Repealed. 1980, Act 299, Imd. Eff. Oct. 21, 1980.**

## **PUBLIC ACCOUNTANCY ACT**

### **Act 130 of 1976**

**338.2101-338.2125 Repealed. 1980, Act 299, Imd. Eff. Oct. 21, 1980.**

## **ELEVATOR LICENSING**

### **Act 333 of 1976**

AN ACT to provide for the licensing of elevator journeymen and the regulation of elevators and elevator journeymen; to prescribe the functions of the director of labor and the elevator safety board; and to provide penalties for violations of this act.

**History:** 1976, Act 333, Eff. Mar. 31, 1977.

*The People of the State of Michigan enact:*

#### **338.2151 Definitions.**

Sec. 1. (1) The definitions contained in Act No. 227 of the Public Acts of 1967, being sections 408.801 to 408.824 of the Michigan Compiled Laws, shall have the same meaning when used in this act.

(2) "Elevator journeyman" means a person who is qualified and licensed by this state to perform, or to provide supervision in the performance of, the work of installation, alteration, maintenance, repair, servicing, adjusting, inspecting, or testing of elevators.

**History:** 1976, Act 333, Eff. Mar. 31, 1977.

#### **338.2152 Applicability of provisions.**

Sec. 2. This act shall not apply to or in a city, village, or township having regulations under ordinances comparable to this act and Act No. 227 of the Public Acts of 1967, nor to licensed journeymen in such city, village, or township.

**History:** 1976, Act 333, Eff. Mar. 31, 1977.

#### **338.2153 Rules.**

Sec. 3. In addition to the functions of the board provided in Act No. 227 of the Public Acts of 1967, the board shall promulgate rules for the licensing and examination of elevator journeymen and for the periodic servicing and examination of elevators in accordance with Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws.

**History:** 1976, Act 333, Eff. Mar. 31, 1977.

**Administrative rules:** R 408.8101 et seq. of the Michigan Administrative Code.

#### **338.2154 Enforcement of act and rules; variations or modifications of rules.**

Sec. 4. The director of labor shall enforce this act and the rules promulgated pursuant to this act by the board. Where, because of special conditions, a literal enforcement of the rules will result in unnecessary hardship or involve practical difficulties, the director, upon application in specific cases, may authorize variations or modifications of the rules in a manner not contrary to the public interest and so that the spirit of the rules shall be observed, public safety secured, and substantial justice done.

**History:** 1976, Act 333, Eff. Mar. 31, 1977.

#### **338.2155 Elevator; installation, alteration, maintenance, repair, servicing, adjusting, or testing; entering elevator hoistway or machine room.**

Sec. 5. (1) The work of installation, alteration, maintenance, repair, servicing, inspecting, adjusting, or testing of an elevator covered by Act No. 227 of the Public Acts of 1967, shall be done by a person who is licensed by the department of labor as an elevator journeyman, or by his helpers under the immediate supervision of a licensed elevator journeyman.

(2) A person entering an elevator hoistway or machine room for any reason, except under an emergency situation, shall be a licensed elevator journeyman, shall be employed as a helper and be under the supervision of a licensed elevator journeyman, or shall be commissioned as a special or general inspector. This requirement does not apply to engineering, management, or sales personnel of a licensed elevator contractor, or owner's authorized representatives.

**History:** 1976, Act 333, Eff. Mar. 31, 1977.

#### **338.2156 Elevator journeyman's license; application; form; issuance without examination; qualifications; restrictions; supervised work of qualified employee; examination.**

Sec. 6. (1) An application for an elevator journeyman's license shall be made on blank forms furnished by the department.

(2) An elevator journeyman's license shall be issued without written examination to a person who has been



engaged in elevator contractor work of supervising installation or repair, or who has been engaged in the installation, alteration, maintenance, repair, servicing, inspecting, or adjusting of elevator equipment, for a period of not less than 3 years before the effective date of this act, provided application for the license is made within 12 months after the effective date of this act. The elevator journeyman's license shall be issued by the director and board upon the employee's submitting a signed affidavit stating his term of employment with a licensed elevator contractor. The license may be restricted to specific types of work by the director.

(3) A degree in electrical or mechanical engineering from a recognized college or university may be considered the equivalent of 1 year toward qualification for an elevator journeyman's license. A qualified employee of a licensed elevator contractor shall be allowed to work in the installation, alteration, maintenance, repair, servicing, inspecting, adjusting, or testing of elevators under the immediate supervision of a licensed elevator journeyman.

(4) An elevator journeyman's license shall be issued, after the approval of the board and after an applicant successfully passes an examination, to an applicant having a minimum of 3 years of continuous employment as a supervisor of elevator construction or service, or as an elevator constructor, serviceman, maintenance man, or repairman. The license may be restricted to specific types or work by the director.

**History:** 1976, Act 333, Eff. Mar. 31, 1977.

### **338.2157 Elevator journeyman's license; expiration; renewal; grounds for suspension or revocation.**

Sec. 7. An elevator journeyman's license shall expire 1 year after the date of issue, and, unless renewed 60 days thereafter, shall be revoked. An elevator journeyman's license may be suspended or revoked by the director after a hearing, if approved by the board, for incompetence, neglect, misrepresentation, or failure to comply with the requirements of this act or with the rules promulgated pursuant thereto by the board.

**History:** 1976, Act 333, Eff. Mar. 31, 1977;—Am. 1978, Act 238, Imd. Eff. June 15, 1978.

### **338.2158 License and examination fees.**

Sec. 8. (1) Fees for the elevator journeyman's license and elevator journeyman's examination shall be determined by the board.

(2) Fees shall be paid by cash, money order, or certified check to the director. Fees received by the director shall be transmitted to the state treasurer for deposit in the general fund.

**History:** 1976, Act 333, Eff. Mar. 31, 1977.

### **338.2159 Servicing and examining power elevators; exceptions; minimum requirements.**

Sec. 9. A power elevator, except a private residence elevator and a private residence inclined lift, shall be serviced and examined for defects by a licensed elevator journeyman at such periods as may be necessary, but not less than every 60 days, to maintain the equipment in safe operating condition. Minimum requirements shall be established by the board.

**History:** 1976, Act 333, Eff. Mar. 31, 1977.

### **338.2160 Violation; penalty.**

Sec. 10. A person, firm, or corporation who violates a provision of this act or a rule promulgated by the board, for the first offense shall be fined not more than \$50.00, and, for each subsequent offense, fined not more than \$100.00, or imprisoned for not more than 90 days, or both.

**History:** 1976, Act 333, Eff. Mar. 31, 1977.

## STATE LICENSE FEE ACT

### Act 152 of 1979

AN ACT to provide for the establishment and collection of fees for the investigation, regulation, and enforcement of certain occupations and professions, and for certain agencies and businesses; to create certain funds for certain purposes; and to prescribe certain powers and duties of certain state agencies and departments.

**History:** 1979, Act 152, Eff. Jan. 1, 1980;—Am. 1988, Act 461, Eff. Sept. 1, 1989;—Am. 1990, Act 268, Imd. Eff. Oct. 17, 1990;—Am. 2006, Act 645, Imd. Eff. Jan. 5, 2007.

**Compiler's note:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

For transfer of powers and duties of certain health-related functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

*The People of the State of Michigan enact:*

#### 338.2201 Short title.

Sec. 1. This act shall be known and may be cited as the “state license fee act”.

**History:** 1979, Act 152, Eff. Jan. 1, 1980.

**Compiler's note:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

For transfer of powers and duties of certain health-related functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

#### 338.2202 Definitions.

Sec. 2. As used in this act:

(a) "Department" means the department of licensing and regulatory affairs.

(b) "Occupational code" means 1980 PA 299, MCL 339.101 to 339.2919.

**History:** Add. 1988, Act 461, Eff. Sept. 1, 1989;—Am. 1999, Act 171, Imd. Eff. Nov. 10, 1999;—Am. 2012, Act 308, Imd. Eff. Oct. 1, 2012.

**Compiler's note:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

#### 338.2203 Licensing and regulation fund; creation; requirements.

Sec. 3. The licensing and regulation fund is created in the state treasury. All of the following apply to the licensing and regulation fund:

(a) Except as otherwise provided in sections 11, 37, 38, and 39, the fees collected under this act shall be deposited into the fund.

(b) Money in the fund shall be used only to offset the cost of operating the department.

(c) The state treasurer shall direct the investment of the fund and shall credit to the fund interest and earnings from fund investments.

(d) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(e) The department is the administrator of the fund for auditing purposes.

**History:** 1979, Act 152, Eff. Jan. 1, 1980;—Am. 1988, Act 461, Eff. Sept. 1, 1989;—Am. 1990, Act 268, Imd. Eff. Oct. 17, 1990;—Am. 1993, Act 139, Imd. Eff. Aug. 2, 1993;—Am. 2006, Act 645, Imd. Eff. Jan. 5, 2007;—Am. 2007, Act 77, Imd. Eff. Sept. 30, 2007;—Am. 2012, Act 308, Imd. Eff. Oct. 1, 2012.

**Compiler's note:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

MCL 338.2203, which was purported to be amended by 2007 PA 77, was not amended and should not have appeared in the title as an amended section.

#### 338.2205 Refund of fees; rules.

Sec. 5. (1) Except under rules promulgated by the department pursuant to this section or as provided under section 411 of the occupational code, a fee collected by the department, when paid pursuant to this act, shall not be refunded.

(2) The department shall promulgate rules concerning the refund of fees, pursuant to the administrative

procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

**History:** 1979, Act 152, Eff. Jan. 1, 1980;—Am. 1988, Act 461, Eff. Sept. 1, 1989;—Am. 2004, Act 263, Imd. Eff. July 23, 2004.

**Compiler's note:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

**Administrative rules:** R 338.941 et seq. of the Michigan Administrative Code.

### **338.2205a Report; fees charged by third party exam administrator; selection process; definition.**

Sec. 5a. (1) The department shall submit a report each year to the house and senate appropriations committees and the house and senate fiscal agencies for the preceding fiscal year concerning the fees charged by each third party exam administrator for each examination or test conducted by that administrator pursuant to an agreement with the department.

(2) The department shall utilize a competitive selection process that meets the requirements of article 2 of the management and budget act, 1984 PA 431, MCL 18.1201 to 18.1299, when selecting a third party exam administrator to administer an examination or test. The contract with the third party exam administrator shall state the examination fee an individual is required to pay to take the examination or test.

(3) As used in this act, "third party exam administrator" means a person outside of the department with which the department has entered into an agreement to administer an examination or test required under an article of the occupational code.

**History:** Add. 2012, Act 308, Imd. Eff. Oct. 1, 2012.

### **338.2206 Late renewal fee.**

Sec. 6. The department shall charge a \$20.00 late renewal fee if a person fails to renew a license or registration on or before the expiration date prescribed by the department by rule as authorized under the occupational code.

**History:** Add. 1988, Act 461, Eff. Sept. 1, 1989;—Am. 1999, Act 171, Imd. Eff. Nov. 10, 1999.

**Compiler's note:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

### **338.2207 Duplicate license or registration; signed statement; fee.**

Sec. 7. The department may charge a fee for the issuance of a duplicate license or registration. The duplicate shall not be issued unless the person applying for the duplicate signs a statement that the original document has been lost, stolen, or destroyed. The fee for the duplicate shall be \$10.00.

**History:** 1979, Act 152, Eff. Jan. 1, 1980;—Am. 1988, Act 461, Eff. Sept. 1, 1989.

**Compiler's note:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

### **338.2208 Written verification that person not licensed or registered; fee; charge for specific detailed information.**

Sec. 8. (1) The department may charge a \$5.00 fee for providing written verification that a person is or is not licensed or registered at the time of the request for verification.

(2) If the person requesting written verification seeks specific detailed information beyond the information described in subsection (1), the charge for verification shall be \$15.00.

**History:** Add. 1988, Act 461, Eff. Sept. 1, 1989.

**Compiler's note:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

### **338.2209 Publication and distribution of public act and rules; fee.**

Sec. 9. The department may charge a fee for the publication and distribution of the public act from which a board's authority is derived and the rules promulgated under that act. The fee shall be \$2.00 or the cost of the publication, whichever is greater.

**History:** 1979, Act 152, Eff. Jan. 1, 1980;—Am. 1988, Act 461, Eff. Sept. 1, 1989.

**Compiler's note:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

### **338.2210 Correcting records and issuing new document; fee.**

Sec. 10. The department may charge a \$10.00 fee for correcting its records and issuing a new document when a person notifies the department of a change of name, address, or employer. If the change does not require the issuance of a new document, no charge shall be made for correcting the department's records.

**History:** Add. 1988, Act 461, Eff. Sept. 1, 1989.

**Compiler's note:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

### **338.2211 Public accountant; fees; accountancy enforcement fund; creation; administration; use; carrying forward unexpended balance.**

Sec. 11. (1) Fees for a person certified, registered, or licensed or seeking certification, registration, or licensure to engage in the practice of public accounting, under article 7 of the occupational code, MCL 339.720 to 339.736, are as follows:

(a) Application processing fee for individuals and firms.....	\$ 100.00
(b) License to practice for individuals and firms, per year.....	100.00
(c) Individual registration, per year.....	25.00
(d) Permit for temporary practice, per year.....	100.00
(e) Peer review fee .....	100.00

(2) The accountancy enforcement fund is created in the state treasury and shall be administered by the department. Beginning October 1, 2006, the money representing the increase in fees and the addition of the peer review fee imposed in subsection (1) shall be deposited into the accountancy enforcement fund. The department shall utilize the accountancy enforcement fund for the enforcement of article 7 of the occupational code, MCL 339.720 to 339.736, regarding unlicensed activity, licensee and registrant disciplinary actions, and the peer review program conducted by the state board of accountancy and to reimburse the attorney general for expenses incurred in conducting prosecutions of any unlicensed practice and disciplinary actions. A reasonable amount of money in the fund may be used for expenses regarding participation in national accounting organizations essential to the regulation of certified public accountants, as determined and approved by the department. Any unexpended balance in the accountancy enforcement fund at the end of a fiscal year shall carry forward to the next fiscal year.

**History:** 1979, Act 152, Eff. Jan. 1, 1980;—Am. 1988, Act 461, Eff. Sept. 1, 1989;—Am. 2003, Act 87, Imd. Eff. July 23, 2003;—Am. 2005, Act 277, Imd. Eff. Dec. 19, 2005.

**Compiler's note:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

### **338.2213 Architect, professional engineer, or land surveyor; fees.**

Sec. 13. (1) Fees for a person licensed or seeking licensure as an architect under article 20 of the occupational code, MCL 339.2001 to 339.2014, are as follows:

(a) Application processing fee.....	\$ 30.00
(b) Supplemental application processing fee....	20.00
(c) License fee, per year.....	35.00

(2) Fees for a person licensed or seeking licensure as a professional engineer under article 20 of the occupational code, MCL 339.2001 to 339.2014, are as follows:

(a) Application processing fee as follows:	
(i) If paid after September 30, 2015.....	\$ 30.00
(ii) Beginning October 1, 2003 through September 30, 2015.....	35.00
(b) Supplemental application processing fee....	20.00
(c) License fee, per year as follows:	
(i) If paid after September 30, 2015.....	20.00
(ii) Beginning October 1, 2003 through September 30, 2015.....	40.00

(3) Fees for a person licensed or seeking licensure as a land surveyor under article 20 of the occupational code, MCL 339.2001 to 339.2014, are as follows:

- (a) Application processing fee as follows:
- (i) If paid after  
September 30, 2015..... \$ 30.00
- (ii) Beginning October 1, 2003 through  
September 30, 2015..... 35.00
- (b) Supplemental application processing fee.... 20.00
- (c) Examination fees:
- (i) Complete examination..... 110.00
- (ii) Part 1 of the examination (fundamentals)... 55.00
- (iii) Part 2a of the examination (principles and  
practice)..... 45.00
- (iv) Part 2b of the examination  
(Michigan practice)..... 40.00
- (d) Examination review..... 20.00
- (e) License fee, per year..... 50.00

**History:** 1979, Act 152, Eff. Jan. 1, 1980;—Am. 1980, Act 295, Eff. Jan. 1, 1981;—Am. 1988, Act 461, Eff. Sept. 1, 1989;—Am. 2003, Act 87, Imd. Eff. July 23, 2003;—Am. 2007, Act 77, Imd. Eff. Sept. 30, 2007;—Am. 2012, Act 308, Imd. Eff. Oct. 1, 2012.

**Compiler's note:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

### **338.2215 Landscape architect; fees.**

Sec. 15. Fees for a person licensed or seeking licensure as a landscape architect under article 22 of the occupational code, MCL 339.2201 to 339.2211, are as follows:

- (a) Application processing fee..... \$ 200.00
- (b) Supplemental application processing fee... 20.00
- (c) Examination fees:
- (i) Complete examination..... 265.00
- (ii) Section 1 of the examination..... 25.00
- (iii) Section 2 of the examination..... 35.00
- (iv) Section 3 of the examination..... 100.00
- (v) Section 4 of the examination..... 125.00
- (d) Examination review..... 25.00
- (e) License fee, per year..... 60.00

**History:** 1979, Act 152, Eff. Jan. 1, 1980;—Am. 1980, Act 295, Eff. Jan. 1, 1981;—Am. 1988, Act 461, Eff. Sept. 1, 1989;—Am. 2003, Act 87, Imd. Eff. July 23, 2003;—Am. 2007, Act 77, Imd. Eff. Sept. 30, 2007;—Am. 2008, Act 491, Eff. May 13, 2009;—Am. 2012, Act 308, Imd. Eff. Oct. 1, 2012.

**Compiler's note:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

### **338.2217 Barber, student barber, student instructor, barber instructor, person operating barbershop or barber college, or person seeking permit for demonstration or demonstrator's permit; fees.**

Sec. 17. Fees for a person licensed or seeking licensure as a barber, student barber, student instructor, or barber instructor, for a person licensed or seeking licensure to operate a barbershop or barber college, or for a person seeking a permit for a demonstration or a demonstrator's permit under article 11 of the occupational code, MCL 339.1101 to 339.1118, are as follows:

- (a) Application processing fees:
- (i) Student barber as follows:
- (A) If paid after  
September 30, 2015..... \$ 15.00
- (B) Beginning October 1, 2003 through  
September 30, 2015..... 20.00
- (ii) Barber as follows:
- (A) If paid after  
September 30, 2015..... 15.00
- (B) Beginning October 1, 2003 through  
September 30, 2015..... 20.00
- (iii) Student instructor as follows:
- (A) If paid after

	September 30, 2015.....	15.00
(B)	Beginning October 1, 2003 through September 30, 2015.....	20.00
(iv)	Barber instructor as follows:	
(A)	If paid after September 30, 2015.....	15.00
(B)	Beginning October 1, 2003 through September 30, 2015.....	20.00
(v)	Barbershop as follows:	
(A)	If paid after September 30, 2015.....	40.00
(B)	Beginning October 1, 2003 through September 30, 2015.....	50.00
(vi)	Barber college as follows:	
(A)	If paid after September 30, 2015.....	50.00
(B)	Beginning October 1, 2003 through September 30, 2015.....	75.00
(b)	Examination fees:	
(i)	Complete barber examination.....	75.00
(A)	Written portion only.....	35.00
(B)	Practical portion only.....	45.00
(ii)	Complete instructor examination.....	75.00
(A)	Written portion only.....	35.00
(B)	Practical portion only.....	45.00
(c)	Examination review.....	20.00
(d)	License fees, per year:	
(i)	Student barber as follows:	
(A)	If paid after September 30, 2015.....	15.00
(B)	Beginning October 1, 2003 through September 30, 2015.....	30.00
(ii)	Barber as follows:	
(A)	If paid after September 30, 2015.....	15.00
(B)	Beginning October 1, 2003 through September 30, 2015.....	30.00
(iii)	Student instructor as follows:	
(A)	If paid after September 30, 2015.....	15.00
(B)	Beginning October 1, 2003 through September 30, 2015.....	30.00
(iv)	Barber instructor as follows:	
(A)	If paid after September 30, 2015.....	25.00
(B)	Beginning October 1, 2003 through September 30, 2015.....	40.00
(v)	Barbershop as follows:	
(A)	If paid after September 30, 2015.....	30.00
(B)	Beginning October 1, 2003 through September 30, 2015.....	40.00
(vi)	Barber college.....	150.00
(e)	Demonstrator's temporary permit as follows:	
(i)	If paid after September 30, 2015.....	10.00
(ii)	Beginning October 1, 2003 through September 30, 2015.....	15.00
(f)	Demonstration temporary permit as follows:	
(i)	If paid after September 30, 2015.....	10.00



- (ii) Beginning October 1, 2003 through  
September 30, 2015..... 15.00

**History:** 1979, Act 152, Eff. Jan. 1, 1980;—Am. 1984, Act 24, Imd. Eff. Mar. 12, 1984;—Am. 1988, Act 461, Eff. Sept. 1, 1989;—Am. 2003, Act 87, Imd. Eff. July 23, 2003;—Am. 2007, Act 77, Imd. Eff. Sept. 30, 2007;—Am. 2012, Act 308, Imd. Eff. Oct. 1, 2012.

**Compiler's note:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

### **338.2219 Repealed. 1995, Act 126, Eff. Jan. 1, 1996.**

**Compiler's note:** The repealed section pertained to marriage counselor fees.

### **338.2221 Collection agency or collection agency manager; fees.**

Sec. 21. Fees for a person licensed or seeking licensure to operate a collection agency or to be a collection agency manager under article 9 of the occupational code, MCL 339.901 to 339.920, are as follows:

- (a) Application processing fees:
  - (i) Agency nonowner manager as follows:
    - (A) If paid after  
September 30, 2015..... \$ 25.00
    - (B) Beginning October 1, 2003 through  
September 30, 2015..... 35.00
  - (ii) Agency..... 100.00
- (b) Examination fee..... 50.00
- (c) Examination review fee..... 20.00
- (d) License fee, per year:
  - (i) Agency nonowner manager..... 50.00
  - (ii) Agency..... 125.00

**History:** 1979, Act 152, Eff. Jan. 1, 1980;—Am. 1980, Act 295, Eff. Jan. 1, 1981;—Am. 1981, Act 227, Imd. Eff. Jan. 7, 1982;—Am. 1988, Act 461, Eff. Sept. 1, 1989;—Am. 2003, Act 87, Imd. Eff. July 23, 2003;—Am. 2007, Act 77, Imd. Eff. Sept. 30, 2007;—Am. 2012, Act 308, Imd. Eff. Oct. 1, 2012.

**Compiler's note:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

### **338.2223 Professional community planner; fees.**

Sec. 23. Fees for a person registered or seeking registration as a professional community planner under article 23 of the occupational code, MCL 339.2301 to 339.2310, are as follows:

- (a) Application processing fee as follows:
  - (i) If paid after  
September 30, 2015..... \$ 30.00
  - (ii) Beginning October 1, 2003  
through September 30, 2015..... 35.00
- (b) Supplemental application processing fee.... 20.00
- (c) Examination fee, Michigan portion..... 100.00
- (d) Examination review..... 25.00
- (e) Registration fee, per year..... 50.00

**History:** 1979, Act 152, Eff. Jan. 1, 1980;—Am. 1980, Act 295, Eff. Jan. 1, 1981;—Am. 1988, Act 461, Eff. Sept. 1, 1989;—Am. 2003, Act 87, Imd. Eff. July 23, 2003;—Am. 2007, Act 77, Imd. Eff. Sept. 30, 2007;—Am. 2012, Act 308, Imd. Eff. Oct. 1, 2012.

**Compiler's note:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

### **338.2225 Cosmetologist, manicurist, natural hair culturist, esthetician, electrologist, instructor, operator of cosmetology establishment or school of cosmetology, person seeking student registration or transfer, or person conducting apprenticeship program; fees.**

Sec. 25. Fees for a person licensed or seeking licensure as a cosmetologist, manicurist, natural hair culturist, esthetician, electrologist, or instructor or a person licensed or seeking licensure to operate a cosmetology establishment or school of cosmetology, seeking a student registration or transfer, or seeking a permit to conduct an apprenticeship program under article 12 of the occupational code, MCL 339.1201 to 339.1218, are as follows:

- (a) Application processing fees:

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(i)	Apprenticeship program.....	\$ 25.00
(ii)	Cosmetologist, manicurist, natural hair culturist, esthetician, electrologist, or instructor as follows:	
(A)	If paid	
	after September 30, 2015.....	10.00
(B)	Beginning October 1, 2003 through September 30, 2015.....	15.00
(iii)	Cosmetology establishment.....	25.00
(iv)	School of cosmetology.....	100.00
(b)	Examination fees:	
(i)	Complete examination for cosmetologist, manicurist, natural hair culturist, esthetician, electrologist, or instructor.....	25.00
(ii)	Written portion only.....	15.00
(iii)	Practical portion only.....	15.00
(iv)	Examination review.....	20.00
(c)	License fees, per year:	
(i)	Cosmetologist, manicurist, natural hair culturist, esthetician, electrologist, or instructor as follows:	
(A)	If paid	
	after September 30, 2015.....	12.00
(B)	Beginning October 1, 2003 through September 30, 2015.....	24.00
(ii)	Cosmetology establishment.....	25.00
(iii)	School of cosmetology.....	100.00
(d)	Student registration or transfer fee as follows:	
(i)	If paid	
	after September 30, 2015.....	5.00
(ii)	Beginning October 1, 2003 through September 30, 2015.....	15.00

**History:** 1979, Act 152, Eff. Jan. 1, 1980;—Am. 1980, Act 295, Eff. Jan. 1, 1981;—Am. 1988, Act 461, Eff. Sept. 1, 1989;—Am. 1997, Act 98, Imd. Eff. Aug. 7, 1997;—Am. 2003, Act 87, Imd. Eff. July 23, 2003;—Am. 2007, Act 77, Imd. Eff. Sept. 30, 2007;—Am. 2012, Act 308, Imd. Eff. Oct. 1, 2012.

**Compiler's note:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

### **338.2227 Employment or consulting agent or operator of personnel agency; fees.**

Sec. 27. Fees for a person licensed or seeking licensure as an employment or consulting agent or for a person licensed or seeking licensure to operate a personnel agency under article 10 of the occupational code, MCL 339.1001 to 339.1022, are as follows:

(a)	Application processing fees:	
(i)	Personnel agency.....	\$ 225.00
(ii)	Employment or consulting agent.....	30.00
(iii)	Officer or stockholder change.....	25.00
(b)	Examination fee.....	50.00
(c)	Examination review.....	20.00
(d)	License fee, per year:	
(i)	Personnel agency.....	125.00
(ii)	Employment or consulting agent as follows:	
(A)	If paid after	
	September 30, 2015.....	30.00
(B)	Beginning October 1, 2003 through September 30, 2015.....	40.00

**History:** 1979, Act 152, Eff. Jan. 1, 1980;—Am. 1980, Act 295, Eff. Jan. 1, 1981;—Am. 1988, Act 461, Eff. Sept. 1, 1989;—Am. 1992, Act 252, Imd. Eff. Nov. 19, 1992;—Am. 2003, Act 87, Imd. Eff. July 23, 2003;—Am. 2007, Act 77, Imd. Eff. Sept. 30, 2007;—Am. 2012, Act 308, Imd. Eff. Oct. 1, 2012.

**Compiler's note:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

### **338.2228 Auctioneer; registration fees.**

Sec. 28. Fees for an individual registered or seeking registration as an auctioneer under article 29 of the occupational code, MCL 339.2901 to 339.2919, are as follows:

- (a) Application processing for registered auctioneer..... \$ 50.00
- (b) Examination fee for registered auctioneer.. 50.00
- (c) Registration fees, per year:
  - (i) Auctioneer - individual..... 200.00
  - (ii) Auctioneer - firm..... 200.00

**History:** Add. 2006, Act 490, Imd. Eff. Dec. 29, 2006;—Am. 2007, Act 77, Imd. Eff. Sept. 30, 2007.

### **338.2229 Forester; fees.**

Sec. 29. Fees for a person registered or seeking registration as a forester under article 21 of the occupational code, MCL 339.2101 to 339.2108, are as follows:

- (a) Application processing fee..... \$ 50.00
- (b) Registration fee, per year as follows:
  - (i) If paid after September 30, 2015..... 25.00
  - (ii) Beginning October 1, 2003 through September 30, 2015..... 40.00

**History:** 1979, Act 152, Eff. Jan. 1, 1980;—Am. 1980, Act 295, Eff. Jan. 1, 1981;—Am. 1988, Act 461, Eff. Sept. 1, 1989;—Am. 2003, Act 87, Eff. July 23, 2003;—Am. 2007, Act 77, Imd. Eff. Sept. 30, 2007;—Am. 2012, Act 308, Imd. Eff. Oct. 1, 2012.

**Compiler's note:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

### **338.2231 Hearing aid dealer, salesperson, or trainee; fees.**

Sec. 31. Fees for a person licensed or seeking licensure as a hearing aid dealer, salesperson, or trainee under article 13 of the occupational code, MCL 339.1301 to 339.1309, are as follows:

- (a) Application processing fees:
  - (i) Dealer..... \$ 20.00
  - (ii) Salesperson..... 20.00
  - (iii) Trainee..... 10.00
- (b) Examination fees:
  - (i) Complete dealer examination..... 100.00
  - (ii) Dealer examination, per part..... 35.00
  - (iii) Complete salesperson examination..... 100.00
  - (iv) Salesperson examination, per part..... 30.00
- (c) Examination review..... 20.00
- (d) License fees, per year:
  - (i) Dealer..... 80.00
  - (ii) Salesperson..... 50.00
  - (iii) Trainee as follows:
    - (A) If paid after September 30, 2015..... 20.00
    - (B) Beginning October 1, 2003 through September 30, 2015..... 40.00

**History:** 1979, Act 152, Eff. Jan. 1, 1980;—Am. 1980, Act 295, Eff. Jan. 1, 1981;—Am. 1988, Act 461, Eff. Sept. 1, 1989;—Am. 2003, Act 87, Imd. Eff. July 23, 2003;—Am. 2007, Act 77, Imd. Eff. Sept. 30, 2007;—Am. 2012, Act 308, Imd. Eff. Oct. 1, 2012.

**Compiler's note:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

### **338.2233 Repealed. 1995, Act 183, Imd. Eff. Oct. 23, 1995.**

**Compiler's note:** The repealed section pertained to required fees for horologists and horology apprentices.

### **338.2235 Repealed. 1988, Act 461, Eff. Sept. 1, 1989.**

**Compiler's note:** The repealed section pertained to fees for land sold or offered for sale under MCL 565.801 to 565.835.

**338.2237 Real estate broker, associate broker, salesperson, or branch office; fees; registration of property approved under land sales act; real estate education fund; real estate enforcement fund; creation.**

Sec. 37. (1) Fees for a person licensed or seeking licensure as a real estate broker, associate broker, salesperson, or branch office or seeking other licenses or approvals issued under article 25 of the occupational code, MCL 339.2501 to 339.2518, are as follows:

- (a) Application processing fees:
  - (i) Brokers and associate brokers as follows:
    - (A) If paid  
after September 30, 2015..... \$ 20.00
    - (B) Beginning October 1, 2003 through  
September 30, 2015..... 35.00
  - (ii) Salespersons..... 10.00
  - (iii) Branch office..... 10.00
- (b) License fees, per year:
  - (i) Brokers and associate brokers..... 36.00
  - (ii) Salespersons..... 26.00
- (c) Branch office fee, per year as follows:
  - (i) If paid  
after September 30, 2015..... 10.00
  - (ii) Beginning October 1, 2003 through  
September 30, 2015..... 20.00
- (d) Sale of out of state property:
  - (i) Application to sell..... 20.00
  - (ii) Property registration..... 500.00
  - (iii) Renewal of approval to sell..... 20.00

(2) A fee is not required for the registration of property approved under the land sales act, 1972 PA 286, MCL 565.801 to 565.835.

(3) The real estate education fund is created in the state treasury. All of the following apply to the real estate education fund:

(a) Fifteen dollars of each license fee received by the department under subsection (1)(b) during that 3-year license cycle shall be forwarded to the state treasurer for deposit into the real estate education fund.

(b) The department shall use the money in the real estate education fund only for the operation of departmental programs related to education required of all licensees or applicants for licensure under article 25 of the occupational code, MCL 339.2501 to 339.2518.

(c) The state treasurer shall direct the investment of the fund and shall credit to the fund interest and earnings from fund investments.

(d) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(e) The department is the administrator of the fund for auditing purposes.

(4) The real estate enforcement fund is created in the state treasury. All of the following apply to the real estate enforcement fund:

(a) Fifteen dollars of each license fee received by the department under subsection (1)(b) during that 3-year license cycle shall be forwarded to the state treasurer for deposit into the real estate enforcement fund.

(b) The department in conjunction with the attorney general shall use the money in the real estate enforcement fund only for the investigation and enforcement of actions regarding unlicensed activity and real estate fraud.

(c) The state treasurer shall direct the investment of the fund and shall credit to the fund interest and earnings from fund investments.

(d) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(e) The department is the administrator of the fund for auditing purposes.

**History:** 1979, Act 152, Eff. Jan. 1, 1980;—Am. 1980, Act 295, Eff. Jan. 1, 1981;—Am. 1981, Act 227, Imd. Eff. Jan. 7, 1982;—Am. 1983, Act 145, Imd. Eff. July 18, 1983;—Am. 1988, Act 461, Eff. Sept. 1, 1989;—Am. 2002, Act 623, Imd. Eff. Dec. 23, 2002;—Am. 2003, Act 87, Imd. Eff. July 23, 2003;—Am. 2006, Act 645, Imd. Eff. Jan. 5, 2007;—Am. 2007, Act 77, Imd. Eff. Sept. 30, 2007;—Am. 2012, Act 308, Imd. Eff. Oct. 1, 2012.

**Compiler's note:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department

**338.2238 State licensed real estate appraiser, certified general real estate appraiser, certified residential real estate appraiser, or limited real estate appraiser; fees; inclusion of federal fee; creation of real estate appraiser education fund.**

Sec. 38. (1) Fees for an individual licensed or seeking licensure as a state licensed real estate appraiser, a certified general real estate appraiser, a certified residential real estate appraiser, or a limited real estate appraiser under article 26 of the occupational code, MCL 339.2601 to 339.2637, are as follows:

- (a) Application processing fees:
- (i) Certified general real estate appraiser as follows:
  - (A) If paid after September 30, 2015..... \$ 25.00
  - (B) Beginning October 1, 2003 through September 30, 2015..... \$ 35.00
- (ii) Certified residential real estate appraiser as follows:
  - (A) If paid after September 30, 2015..... \$ 25.00
  - (B) Beginning October 1, 2003 through September 30, 2015..... \$ 35.00
- (iii) State licensed real estate appraiser as follows:
  - (A) If paid after September 30, 2015..... \$ 25.00
  - (B) Beginning October 1, 2003 through September 30, 2015..... \$ 35.00
- (iv) Limited real estate appraiser as follows:
  - (A) If paid after September 30, 2015..... \$ 25.00
  - (B) Beginning October 1, 2003 through September 30, 2015..... \$ 35.00
- (b) Examination fees:
  - (i) Certified general real estate appraiser.... \$ 100.00
  - (ii) Certified residential real estate appraiser..... \$ 100.00
  - (iii) State licensed real estate appraiser..... \$ 100.00
- (c) License fee, per year:
  - (i) Certified general real estate appraiser.... \$ 175.00
  - (ii) Certified residential real estate appraiser..... \$ 175.00
  - (iii) State licensed real estate appraiser..... \$ 175.00
  - (iv) Limited real estate appraiser..... \$ 125.00
- (d) Temporary permit fee..... \$ 125.00

(2) The license fee includes a fee imposed by the federal government under 12 USC 3338 for certified general real estate appraisers, certified residential real estate appraisers, and state licensed real estate appraisers. The amount of the fee described in this subsection shall not exceed \$50.00 per licensee, and the department shall collect and pay the fee to the federal government under section 2637 of the occupational code, MCL 339.2637.

(3) The real estate appraiser education fund is created in the state treasury. All of the following apply to the real estate appraiser education fund:

(a) Ten dollars of each fee received under subsection (1)(c) shall be forwarded to the state treasurer for deposit into the real estate appraiser education fund.

(b) The department shall use the money in the real estate appraiser education fund only for the operation of departmental programs related to the education required of all licensees or applicants for licensure under article 26 of the occupational code, MCL 339.2601 to 339.2637.

(c) The state treasurer shall direct the investment of the fund and shall credit to the fund interest and earnings from fund investments.

(d) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the

general fund.

(e) The department is the administrator of the fund for auditing purposes.

**History:** Add. 1990, Act 268, Imd. Eff. Oct. 17, 1990;—Am. 1999, Act 171, Imd. Eff. Nov. 10, 1999;—Am. 2003, Act 87, Imd. Eff. July 23, 2003;—Am. 2007, Act 77, Imd. Eff. Sept. 30, 2007;—Am. 2012, Act 308, Imd. Eff. Oct. 1, 2012.

**Compiler's note:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

**338.2239 Residential builder or residential maintenance and alteration contractor, salesperson, or branch office; fees; builder enforcement fund; creation; administration; allocation; use; carryforward of unexpended balance.**

Sec. 39. (1) Fees for a person licensed or seeking licensure as a residential builder or residential maintenance and alteration contractor, salesperson, or branch office under article 24 of the occupational code, MCL 339.2401 to 339.2412, are as follows:

(a)	Application processing fee.....	\$ 15.00
(b)	Examination fees:	
(i)	Complete builder or maintenance and alteration contractor examination.....	50.00
(ii)	Law and rules portion.....	30.00
(iii)	Practice or trades portion.....	30.00
(iv)	Salesperson examination.....	30.00
(c)	Examination review.....	20.00
(d)	License fee only for the first license cycle of an initial or renewal licensee following the effective date of the amendatory act that added subsection (2), per year .....	60.00
(e)	License fee, per year.....	50.00

(2) The builder enforcement fund is created in the state treasury. All of the following apply to the builder enforcement fund:

(a) The department is the administrator of the fund for auditing purposes.

(b) A 1-time-only \$30.00 allocation from a license fee received by the department under subsection (1)(d) during a single 3-year license cycle shall be deposited into the builder enforcement fund. The department shall make the \$30.00 allocation only once per licensee.

(c) Five dollars of the \$50.00 license fee paid under subsection (1)(e) shall be deposited into the builder enforcement fund. If on December 1 of any calendar year the department determines that the balance in the builder enforcement fund is more than \$3,000,000.00, the \$5.00 allocation to the builder enforcement fund from the \$50.00 renewal fee due after January 1 of the following year shall not be made. If on any subsequent December 1 the department determines that the balance in the fund is less than \$750,000.00, the \$5.00 allocation shall resume for any renewal fee due after January 1 of the following year.

(d) The department shall utilize the builder enforcement fund only for the enforcement of article 24 of the occupational code, MCL 339.2401 to 339.2412, regarding unlicensed activity as further described in section 601(1) and (2) of the occupational code, MCL 339.601, and to reimburse the attorney general for the reasonable cost of services provided to the department and for expenses incurred in prosecutions of unlicensed activity or prosecuting attorney for expenses incurred in conducting prosecutions of unlicensed practice.

(e) The state treasurer shall direct the investment of the fund and shall credit to the fund interest and earnings from fund investments.

(f) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

**History:** 1979, Act 152, Eff. Jan. 1, 1980;—Am. 1980, Act 295, Eff. Jan. 1, 1981;—Am. 1988, Act 461, Eff. Sept. 1, 1989;—Am. 2003, Act 87, Imd. Eff. July 23, 2003;—Am. 2007, Act 77, Imd. Eff. Sept. 30, 2007;—Am. 2007, Act 158, Eff. June 1, 2008;—Am. 2012, Act 308, Imd. Eff. Oct. 1, 2012.

**Compiler's note:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

**338.2241 Repealed. 1995, Act 104, Imd. Eff. June 23, 1995.**

**Compiler's note:** The repealed section pertained to myomassologist fees.



**338.2243 Practice of mortuary science, operator of funeral establishment, resident trainee, embalmer, or funeral director; fees.**

Sec. 43. Fees for a person licensed or seeking licensure to engage in the practice of mortuary science or to operate a funeral establishment or for a person licensed or seeking licensure as a resident trainee or licensed as an embalmer or funeral director under article 18 of the occupational code, MCL 339.1801 to 339.1812, are as follows:

(a)	Application processing fees:	
(i)	Mortuary science license.....	\$ 20.00
(ii)	Funeral establishment license.....	115.00
(iii)	Resident trainee.....	15.00
(b)	Examination fees:	
(i)	Complete examination.....	200.00
(ii)	National examination only.....	150.00
(iii)	State examination only.....	50.00
(c)	Examination review.....	25.00
(d)	License fees, per year:	
(i)	Mortuary science as follows:	
(A)	If paid after	
	September 30, 2015.....	30.00
(B)	Beginning October 1, 2003 through	
	September 30, 2015.....	40.00
(ii)	Funeral establishment.....	55.00
(iii)	Embalmer.....	30.00
(iv)	Funeral director as follows:	
(A)	If paid after	
	September 30, 2015.....	30.00
(B)	Beginning October 1, 2003 through	
	September 30, 2015.....	40.00
(v)	Resident trainee as follows:	
(A)	If paid after	
	September 30, 2015.....	15.00
(B)	Beginning October 1, 2003 through	
	September 30, 2015.....	30.00

**History:** 1979, Act 152, Eff. Jan. 1, 1980;—Am. 1980, Act 295, Eff. Jan. 1, 1981;—Am. 1988, Act 461, Eff. Sept. 1, 1989;—Am. 2003, Act 87, Imd. Eff. July 23, 2003;—Am. 2007, Act 77, Imd. Eff. Sept. 30, 2007;—Am. 2012, Act 308, Imd. Eff. Oct. 1, 2012.

**Compiler's note:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

**338.2245 Repealed. 2000, Act 11, Imd. Eff. Mar. 7, 2000.**

**Compiler's note:** The repealed section pertained to finding a person unqualified.

**338.2247 Repealed. 2001, Act 139, Imd. Eff. Oct. 26, 2001.**

**Compiler's note:** The repealed section pertained to nursing home administrator licensing fees.

**338.2249 Repealed. 2004, Act 403, Eff. May 13, 2005.**

**Compiler's note:** The repealed section pertained to license fees for professional boxing.

**338.2251-338.2261 Repealed. 1993, Act 87, Eff. Apr. 1, 1994.**

**Compiler's note:** The repealed sections pertained to fees for persons engaged in manufacture, distribution, prescribing, or dispensing controlled substances, chiropractors, counselors, dentists, dental assistants, dental hygienists, persons engaged in practice of medicine or seeking approval to supervise physician's assistants, registered nurses, licensed practical nurses, trained attendants, and optometrists.

**338.2262 Ocularist or apprentice ocularist; fees.**

Sec. 62. Fees for a person registered or seeking registration as an ocularist or an apprentice ocularist under article 27 of the occupational code, MCL 339.2701 to 339.2721, are as follows:

(a)	Application processing fee as follows:	
(i)	If paid after	
	September 30, 2015.....	15.00
(ii)	Beginning October 1, 2003 through	

	September 30, 2015.....	35.00
(b)	Registration fee, per year:	
(i)	Ocularist as follows:	
(A)	If paid after	
	September 30, 2015.....	20.00
(B)	Beginning October 1, 2003 through	
	September 30, 2015.....	40.00
(ii)	Apprentice as follows:	
(A)	If paid after	
	September 30, 2015.....	10.00
(B)	Beginning October 1, 2003 through	
	September 30, 2015.....	20.00

**History:** Add. 1982, Act 210, Imd. Eff. July 2, 1982;—Am. 1988, Act 461, Eff. Sept. 1, 1989;—Am. 2003, Act 87, Imd. Eff. July 23, 2003;—Am. 2007, Act 77, Imd. Eff. Sept. 30, 2007;—Am. 2012, Act 308, Imd. Eff. Oct. 1, 2012.

**Compiler's note:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

### **338.2263-338.2275 Repealed. 1993, Act 87, Eff. Apr. 1, 1994.**

**Compiler's note:** The repealed sections pertained to fees for pharmacists or other practices regulated under MCL 333.17701 to 333.17770, physical therapists, physician's assistants, podiatrists, psychologists, sanitarians, certified occupational therapists, certified occupational therapist assistants, veterinarians, and veterinary technicians.

### **338.2277 Effective date.**

Sec. 77. This act shall take effect January 1, 1980.

**History:** 1979, Act 152, Eff. Jan. 1, 1980.

**Compiler's note:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

## **BUILDING OFFICIALS AND INSPECTORS REGISTRATION ACT**

### **Act 54 of 1986**

AN ACT to regulate and register building officials, plan reviewers, building inspectors, electrical inspectors, mechanical inspectors, and plumbing inspectors; to prescribe the powers and duties of the state construction code commission; to create a building officials advisory board; to require the approval of educational and training programs for building officials, plan reviewers, and inspectors; to provide for the establishment and disposition of fees; to provide for the promulgation of rules; and to prescribe penalties.

**History:** 1986, Act 54, Imd. Eff. Mar. 17, 1986.

*The People of the State of Michigan enact:*

#### **338.2301 Short title.**

Sec. 1. This act shall be known and may be cited as the “building officials and inspectors registration act”.

**History:** 1986, Act 54, Imd. Eff. Mar. 17, 1986.

#### **338.2302 Definitions.**

Sec. 2. As used in this act:

- (a) “Adopted” means a properly passed rule or ordinance.
- (b) “Advisory board” means the building officials advisory board created pursuant to section 3.
- (c) “Approved” means reviewed and found acceptable by the commission.
- (d) “Building official” means a construction code enforcement person working as an inspector, or plan reviewer, or actively engaged in the administration and enforcement of adopted building, electrical, mechanical, or plumbing codes, or any combination of these codes.
- (e) “Code” means the state construction code provided for in section 4 of the state construction code act of 1972, Act No. 230 of the Public Acts of 1972, being section 125.1504 of the Michigan Compiled Laws, or a part of that code which is of limited application, and includes a modification of or amendment to the code, or a nationally recognized model building code or other nationally recognized model code adopted by a governmental subdivision pursuant to section 8 of the state construction code act of 1972, being section 125.1508 of the Michigan Compiled Laws.
- (f) “Commission” means the state construction code commission as established in section 3 of the state construction code act of 1972, Act No. 230 of the Public Acts of 1972, being section 125.1503 of the Michigan Compiled Laws.
- (g) “Education or training program” means formal or informal courses, seminars, correspondence programs, and other teaching aids for building officials, plan reviewers, and inspectors which have been approved by the commission.
- (h) “Enforcing agency” means an enforcing agency as defined in section 2 of the construction code act of 1972, Act No. 230 of the Public Acts of 1972, being section 125.1502 of the Michigan Compiled Laws.
- (i) “Inspector” means the person responsible for the administration and enforcement of the construction of buildings, structures, or appurtenances under the requirements of the applicable building, electrical, mechanical, or plumbing code administered and enforced within the jurisdiction of the employing enforcing agency employing the person.
- (j) “Practical construction experience” means experience in construction related trades or code administration and enforcement which is found to be acceptable to the commission.
- (k) “Plan reviewer” means a person engaged in the practice of examining construction documents for the purpose of determining compliance with applicable codes.
- (l) “Provisional registration” means a building official, plan reviewer, or inspector who is registered subject to attaining the amount of training, education, and experience required by the appropriate board and the commission.
- (m) “Registered” means a building official, plan reviewer, or inspector who is registered under this act.
- (n) “Test” means a method of determining the qualifications of a person seeking registration as a building official, plan reviewer, or inspector under this act. Tests may be written, oral, practical, or a combination of written, oral, and practical. Completion of educational or training programs which have been approved by the commission may be substituted for appropriate tests or portions of tests.
- (o) “Code change cycle” means the publication by a nationally recognized code writing body of a new edition of a basic code which includes all approved changes to the basic code since the previous edition. Code change cycle does not include changes to the basic code approved and published in annual supplements to the code.

**History:** 1986, Act 54, Imd. Eff. Mar. 17, 1986.

**338.2303 Building officials advisory board; creation; purpose; appointment, qualifications, and terms of members.**

Sec. 3. (1) The building officials advisory board is created in the department of labor to assist the commission in establishing standards and criteria for the training and qualifications of building officials.

(2) The advisory board shall consist of 9 members appointed by the commission. Of those members first appointed, 3 shall be appointed for a term of 1 year, 3 shall be appointed for a term of 2 years, and 3 shall be appointed for a term of 3 years. The advisory board shall consist of the following:

- (a) A building official who enforces the building officials and code administrators basic building code.
- (b) A building official who enforces the uniform building code.
- (c) A building official who enforces the Michigan building code.
- (d) Two members of the general public, 1 of whom shall be a person with 1 or more disabilities.
- (e) A registered architect or engineer.
- (f) A building contractor.
- (g) A building trades journey worker from a recognized apprentice course.
- (h) A representative of small business.

(3) Of the 3 building officials appointed pursuant to subsection (2)(a), (b), and (c), 1 shall represent a county, 1 shall represent a city, and 1 shall represent a township or village.

**History:** 1986, Act 54, Imd. Eff. Mar. 17, 1986;—Am. 1998, Act 50, Imd. Eff. Mar. 30, 1998.

**338.2304 Enforcement of construction codes; participation of boards; review and approval of educational and training programs, tests, and instructors; recommendation of criteria.**

Sec. 4. (1) The commission shall promote effective and uniform enforcement of construction codes in the state by improving the competence of building officials, plan reviewers, and inspectors.

(2) The advisory board, barrier free design board, the electrical administrative board, the board of mechanical rules, and the state plumbing board shall participate in and work with the commission to establish both of the following:

(a) Minimum training and experience standards, qualifications, and classifications of responsibility applicable to persons engaged in the enforcement of codes, and plan reviews.

(b) Minimum criteria for the approval of educational or training programs and tests.

(3) The commission may review and approve prepared educational and training programs, tests, and instructors. The examination and evaluation of training and educational programs, instructors, and tests shall include, but not be limited to:

- (a) Construction code administration.
- (b) Specialty aspects of code program parts, including all of the following:
  - (i) Prohibited appliances.
  - (ii) Premanufactured units.
  - (iii) Approval of materials, products, and methods.
  - (iv) Barrier free design.
  - (v) Energy conservation.
- (c) Inspection techniques.
- (d) Communication skills.
- (e) Human and public relations.
- (f) Report writing.
- (g) Plans and specifications reading.
- (h) Pertinent laws, ordinances, rules, and policies.
- (i) Construction practices.

(4) If the commission finds that the proposed educational or training courses or programs are acceptable under minimum requirements established under this section, the commission shall give approval to the courses or programs for a limited period of time and with appropriate qualifications as the commission prescribes.

(5) A board listed in section 4(2) shall recommend to the commission criteria for approval which relate to the board's function and are required by section 4(2). The commission shall give consideration to any submission by a board, but the commission shall have final responsibility for the approval of training standards and programs.

**History:** 1986, Act 54, Imd. Eff. Mar. 17, 1986.

### **338.2305 Rules.**

Sec. 5. The commission shall promulgate rules for the administration of this act pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

**History:** 1986, Act 54, Imd. Eff. Mar. 17, 1986.

**Administrative rules:** R 408.30001 et seq. of the Michigan Administrative Code.

### **338.2306 Building official, plan reviewer, or inspector; registration; application.**

Sec. 6. (1) Application for registration as a building official, plan reviewer, or inspector shall be made to the appropriate board listed in section 4(2) and to the commission along with the fee prescribed in section 13.

(2) Any person who on the effective date of this act has been engaged in the business of a building official, plan reviewer, or inspector for a period of 3 years shall, upon furnishing the appropriate board listed in section 4(2) with satisfactory evidence of having been so engaged, be registered if the person makes application to the commission within 6 months after the effective date of this act, and pays the fee prescribed in section 13.

(3) Any person who, on the effective date of this act, has been engaged in the business of a building official, plan reviewer, or inspector for a period of less than 3 years shall, upon furnishing the board with satisfactory evidence of having been so engaged, be provisionally registered if the person makes application to the commission within 6 months after the effective date of this act and pays the fee prescribed in section 13.

(4) Any person who, on the effective date of this act, has been engaged in the business of a building official, plan reviewer, or inspector for 3 of the 5 years immediately preceding the date of application shall, upon furnishing the appropriate board listed in section 4(2) with satisfactory evidence of having been so engaged, be registered, if the person makes application to the commission and pays the fee prescribed in section 13.

(5) The commission may issue an initial registration for a period of more or less than 3 years for the purpose of allowing subsequent registration renewal to coincide with the code change cycle.

**History:** 1986, Act 54, Imd. Eff. Mar. 17, 1986.

### **338.2307 Renewal of registration.**

Sec. 7. A registered building official, plan reviewer, or inspector shall renew the registration at periods of not less than 3 years after the date of initial issue. The renewal shall coincide with the code change cycle of the code which the person is enforcing in that jurisdiction. Reregistration or renewal of an initial registration or provisional registration shall be based upon a determination by the appropriate board listed in section 4(2) of the applicant's familiarity with changes to the applicable codes administered and enforced within the jurisdiction of the enforcing agency employing the applicant and pertinent laws, and satisfactory evidence of attending local in-service training and education programs on an ongoing basis.

**History:** 1986, Act 54, Imd. Eff. Mar. 17, 1986.

### **338.2308 Other requirements not superseded.**

Sec. 8. This act does not supersede the requirements applicable to inspectors contained in Act No. 266 of the Public Acts of 1929, being sections 338.901 to 338.917 of the Michigan Compiled Laws, or Act No. 217 of the Public Acts of 1956, being sections 338.881 to 338.892 of the Michigan Compiled Laws.

**History:** 1986, Act 54, Imd. Eff. Mar. 17, 1986.

### **338.2309 Revocation or suspension of registration; enforcing agency as party in interest; hearings.**

Sec. 9. Upon written notice of hearing, the commission may revoke or suspend the registration of any building official, plan reviewer, or inspector if there is sufficient evidence showing that the registered person has violated this act or rules promulgated pursuant to this act, in the performance of his or her duties. In any proceeding under this act, the enforcing agency which employs the person may appear as a party in interest. All hearings shall be conducted pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

**History:** 1986, Act 54, Imd. Eff. Mar. 17, 1986.

### **338.2310 Conflicts of interest; inspection of own work in governmental subdivision prohibited; additional requirements and restrictions; construction of act.**

Sec. 10. (1) Performing instructional duties for educational purposes and providing contractual inspection and consulting services in construction code enforcement shall not be considered conflicts of interest.

(2) An inspector shall not be permitted to inspect his or her own work in a governmental subdivision. As used in this subsection and subsection (3), "governmental subdivision" means governmental subdivision as defined in section 2(1)(t) of the state construction code act of 1972, Act No. 230 of the Public Acts of 1972, being section 125.1502 of the Michigan Compiled Laws.

(3) A governmental subdivision may establish additional requirements and restrictions in the selection and hiring of construction code enforcement officials, inspectors, and plan reviewers.

(4) This act shall not be construed to limit or restrict the type of internal administrative organization an enforcing agency may choose, or to limit or otherwise affect the authority of the enforcing agency to dismiss or suspend a building official, inspector, or plan reviewer at its discretion.

**History:** 1986, Act 54, Imd. Eff. Mar. 17, 1986.

### **338.2311 Registration and reregistration without examination.**

Sec. 11. Upon payment to the commission of the fee prescribed in section 13, the commission shall register and reregister without examination applicants licensed or certified under the laws of other states or national organizations having requirements for certified or licensed building officials, inspectors, or plan reviewers which the commission determines are equivalent to the requirements of this state for the purpose of establishing reciprocity privileges for building officials, inspectors, and plan reviewers.

**History:** 1986, Act 54, Imd. Eff. Mar. 17, 1986.

### **338.2312 Registration required; provisional registration; notice to applicants not qualified for registration; appeal.**

Sec. 12. (1) Subject to subsection (2), after 1 year after the effective date of this act, a person shall not be appointed or employed as a building official, inspector, or plan reviewer by an enforcing agency, unless the person is registered under this act and the rules promulgated under this act.

(2) Any person who, after the effective date of this act, becomes employed by a governmental subdivision as a building official, plan reviewer, or inspector shall within 30 days of employment make application to the commission for provisional registration. Upon furnishing the board with satisfactory evidence of being so employed by a governmental subdivision and payment of the fees prescribed in section 13, the person shall be provisionally registered.

(3) If the commission determines that an applicant for registration does not qualify for registration, the applicant shall be notified of that fact in writing and may appeal an adverse decision in the manner provided by Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

**History:** 1986, Act 54, Imd. Eff. Mar. 17, 1986.

### **338.2313 Registration fees; deposit; waiver.**

Sec. 13. (1) The commission shall charge fees for registration of building officials, inspectors, and plan reviewers and for the examination and evaluation of training and educational programs and courses.

(2) An applicant for registration shall pay the following applicable registration fee to the commission for each year the registration covers:

(a) If paid after September 30, 2015, \$10.00.

(b) If paid on or before September 30, 2015, \$25.00.

(3) A fee established by the commission for the examination and evaluation of training and educational programs and courses shall bear a reasonable relation to the cost for those conducting those training and educational programs and courses.

(4) The commission shall deposit any fees received under this section in the state construction code fund created in section 22 of the Stille-DeRossett-Hale single state construction code act, 1972 PA 230, MCL 125.1522.

(5) The commission shall waive any fee otherwise required under this section if the individual responsible for paying the fee is, and provides proof satisfactory to the commission that he or she is, an honorably discharged veteran of the armed forces of the United States.

**History:** 1986, Act 54, Imd. Eff. Mar. 17, 1986;—Am. 2008, Act 373, Imd. Eff. Dec. 23, 2008;—Am. 2012, Act 314, Imd. Eff. Oct. 1, 2012.



**ASBESTOS ABATEMENT CONTRACTORS LICENSING ACT**  
**Act 135 of 1986**

AN ACT to provide for the licensing and regulation of asbestos abatement contractors; to create the asbestos abatement contractors licensing board; to prescribe certain powers and duties of the department of consumer and industry services; to establish the powers and duties of the asbestos abatement contractors licensing board; to create an asbestos abatement fund and to provide for expenditures from the fund; to provide for the promulgation of rules; to provide for certain fees; and to provide for penalties and civil fines.

**History:** 1986, Act 135, Eff. July 2, 1986;—Am. 1990, Act 2, Imd. Eff. Feb. 12, 1990;—Am. 1998, Act 132, Imd. Eff. June 24, 1998.

*The People of the State of Michigan enact:*

**CHAPTER I**

**338.3101 Short title.**

Sec. 101. This act shall be known and may be cited as the “asbestos abatement contractors licensing act”.

**History:** 1986, Act 135, Eff. July 2, 1986.

**Compiler's note:** For transfer of powers and duties of the division of occupational health in the bureau of environmental and occupational health, with the exception of dry cleaning unit, from the department of public health to the director of the department of labor, see E.R.O. No. 1996-1, compiled at MCL 330.3101 of the Michigan Compiled Laws.

**338.3103 Definitions.**

Sec. 103. As used in this act:

- (a) “Administrative procedures act of 1969” means 1969 PA 306, MCL 24.201 to 24.328.
- (b) “Asbestos” means a group of naturally occurring minerals that separate into fibers, including chrysotile, amosite, crocidolite, anthophyllite, tremolite, and actinolite.
- (c) “Asbestos abatement contractor” means a business entity that is licensed under this act and that carries on the business of asbestos abatement on the premises of another business entity and not on the asbestos abatement contractor's premises.
- (d) “Asbestos abatement project” means any activity involving persons working directly with the demolition, renovation, or encapsulation of friable asbestos materials.
- (e) “Board” means the asbestos abatement contractors licensing board created in section 201.
- (f) “Business entity” means a person, partnership, firm, association, corporation, sole proprietorship, public or private agency, or other legal entity.
- (g) “Construction contractor” means a business entity that, pursuant to a contract with the owner or lessee of real property, provides an improvement to that property.
- (h) “Construction subcontractor” means a business entity that, pursuant to a contract with a person other than the owner or lessee of the real property, performs any part of a construction contractor's contract for an improvement to that property.
- (i) “Demolition” means the razing or taking out of any load-supporting structural member and any related removing or stripping of friable asbestos materials.
- (j) “Department” means the department of consumer and industry services.
- (k) “Encapsulate” means the sealing of friable asbestos materials by means of the spraying of liquid sealant or any other suitable sealing method.
- (l) “Friable asbestos material” means any material that contains more than 1% asbestos by weight and that can be crumbled, pulverized, or reduced to powder when dry, by hand pressure.
- (m) “License” means an authorization issued by the department upon recommendation by the board for demolition, renovation, encapsulation, or removal of asbestos.
- (n) “Neutral party” means a business entity that is not part of the asbestos abatement contractor's primary or secondary family and is not legally associated to any business operated by the asbestos abatement contractor.
- (o) “Removal” means the taking out or stripping of asbestos from an existing structure.
- (p) “Renovation” means the removal or stripping of friable asbestos materials used on any pipe, duct, boiler, tank, reactor, turbine, furnace, or structural member. Renovation does not include any of the following:
  - (i) An operation necessitated by a nonroutine failure of equipment.
  - (ii) An unplanned operation resulting from a sudden unexpected event.
  - (iii) An operation in which load-supporting structural members are wrecked or taken out.
- (q) “Structural member” means any load-supporting member, including, but not limited to, beams and

load-supporting walls, or any nonsupporting member, including, but not limited to, ceilings and nonload-supporting walls.

(r) "Working day" means any day other than a Saturday, Sunday, or state legal holiday.

**History:** 1986, Act 135, Eff. July 2, 1986;—Am. 1993, Act 55, Imd. Eff. June 8, 1993;—Am. 1998, Act 132, Imd. Eff. June 24, 1998

## CHAPTER II

### **338.3201 Asbestos abatement contractors licensing board; created; purpose; appointment, qualifications, and terms of members; vacancies; expenses.**

Sec. 201. (1) There is created an asbestos abatement contractors licensing board in the department, which shall assist the department in administering and carrying out the provisions of this act. The board shall consist of 7 members to be appointed by the governor with the advice and consent of the senate.

(2) Of the 7 members appointed pursuant to subsection (1), 3 shall represent asbestos abatement contractors, 3 shall represent asbestos abatement laborers, and 1 shall represent the general public and be experienced in public health areas. Of the 3 members representing asbestos abatement laborers, no 2 shall belong to the same labor organization as defined in section 2 of Act No. 176 of the Public Acts of 1939, being section 423.2 of the Michigan Compiled Laws.

(3) Each member shall serve for a term of 3 years or until his or her successor is appointed and qualified. Of the members first appointed, 1 labor representative and 1 asbestos abatement contractor representative shall have a term of 1 year; 1 labor representative and 1 asbestos abatement contractor representative shall have a term of 2 years; and 1 labor representative, 1 asbestos abatement contractor representative, and 1 general public representative shall have a term of 3 years. Vacancies shall be filled for the unexpired terms in the same manner as original appointments. Members of the board shall serve without compensation, but shall be entitled to actual and necessary expenses incurred in the performance of official duties under this act.

**History:** 1986, Act 135, Eff. July 2, 1986.

**Compiler's note:** Sec. 317 of this act provides: "The licensing provisions of this act shall take effect 3 months after the effective date of this act."

For transfer of authority, powers, duties, functions, and responsibilities of the asbestos abatement contractors licensing board to the director of the Michigan state department of public health, see E.R.O. No. 1994-1, compiled at MCL 333.26322 of the Michigan Compiled Laws.

### **338.3203 Duties of board; special meetings; quorum; conducting business at public meeting; notice of meeting; availability of documents to public.**

Sec. 203. (1) The board shall do all of the following:

- (a) Organize and make rules governing the board's formal and informal procedures.
- (b) Meet not less than quarterly each year.
- (c) Keep a record of the proceedings and functions.

(2) A special meeting of the board may be called by the chairperson and shall be called upon receipt of a written request signed by 2 or more members of the board. Four members of the board constitute a quorum to conduct business.

(3) The business which the board may perform shall be conducted at a public meeting of the board held in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of the meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976.

(4) A written document prepared, used, in the possession of, or retained by the board in the performance of an official function shall be made available to the public in compliance with the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

**History:** 1986, Act 135, Eff. July 2, 1986.

**Compiler's note:** Sec. 317 of this act provides: "The licensing provisions of this act shall take effect 3 months after the effective date of this act."

For transfer of authority, powers, duties, functions, and responsibilities of the asbestos abatement contractors licensing board to the director of the Michigan state department of public health, see E.R.O. No. 1994-1, compiled at MCL 333.26322 of the Michigan Compiled Laws.

### **338.3205 Additional duties of board.**

Sec. 205. The board shall do all of the following:

(a) Make recommendations to the department concerning the denial, suspension, or revocation of licenses required pursuant to this act, and other enforcement matters under this act.

(b) Upon request by the department, advise the department on the preparation and distribution of

information on asbestos.

(c) Advise the department on the promulgation of administrative rules pursuant to this act.

**History:** 1986, Act 135, Eff. July 2, 1986.

**Compiler's note:** Sec. 317 of this act provides: "The licensing provisions of this act shall take effect 3 months after the effective date of this act."

### **338.3207 Asbestos abatement contractor; license required; applicability of licensing requirement.**

Sec. 207. (1) Except as otherwise provided in subsection (2), an asbestos abatement contractor shall not engage in any activity involving the demolition, renovation, or encapsulation of friable asbestos materials without first receiving a license from the department.

(2) The licensing requirement of subsection (1) does not apply to any of the following if engaged in an asbestos abatement project that is incidental to the primary licensed trade and involves not more than 160 square feet or 260 linear feet of friable asbestos materials:

(a) A business entity licensed under the electrical administrative act, 1956 PA 217, MCL 338.881 to 338.892.

(b) A business entity licensed under the Forbes mechanical contractors act, 1984 PA 192, MCL 338.971 to 338.988.

(c) A business entity licensed under 1929 PA 266, MCL 338.901 to 338.917.

(d) A business entity licensed as a residential builder or a residential maintenance and alteration contractor under article 24 of the occupational code, 1980 PA 299, MCL 339.2401 to 339.2412.

**History:** 1986, Act 135, Eff. July 2, 1986;—Am. 1990, Act 2, Imd. Eff. Feb. 12, 1990;—Am. 1993, Act 55, Imd. Eff. June 8, 1993;—Am. 1998, Act 132, Imd. Eff. June 24, 1998.

### **338.3209 Application for or renewal of license; requirements; fee.**

Sec. 209. (1) To apply for or renew a license, an asbestos abatement contractor shall do all of the following:

(a) Submit a completed application to the department on forms provided by the department. The asbestos abatement contractor shall state on the application whether or not the asbestos abatement contractor has liability insurance.

(b) Pay the fee required by subsection (2).

(c) Submit proof of Michigan workers' disability compensation insurance.

(d) Submit proof that all employees and agents of an asbestos abatement contractor who are responsible for, or are involved in, an asbestos abatement project have received training and become accredited as asbestos abatement workers or asbestos abatement contractors and supervisors as required under the asbestos workers accreditation act, 1988 PA 440, MCL 338.3401 to 338.3418.

(2) Subject to section 211, a license or renewal fee shall be paid as follows:

<u>Number of employees to be engaged in asbestos abatement projects</u>	<u>License fee</u>	<u>License renewal fee</u>
4 or less	\$200.00	\$100.00
5 or more	\$400.00	\$300.00

**History:** 1986, Act 135, Eff. July 2, 1986;—Am. 1993, Act 55, Imd. Eff. June 8, 1993;—Am. 2004, Act 261, Imd. Eff. July 23, 2004.

### **338.3211 Acknowledging receipt of application; notice of deficiency; issuance of license or denial of application; time; statement in license; grounds for denial of application; failure to issue license within certain time period; report; return of fee; proceedings for denial of license; "completed application" defined.**

Sec. 211. (1) Within 15 working days after receiving a license application, the department shall acknowledge receipt of the application and notify the applicant in writing, or make the information electronically available, of any deficiency in the application. Receipt of the application is considered the date the application is received by any agency or department of the state of Michigan. Within 60 calendar days after receiving a completed application, including all additional information requested by the department, the department shall issue a license or deny the license application. The 60-day time period is tolled upon notification by the department of a deficiency until the date the requested information is received by the department. The determination of the completeness of an application does not operate as an approval of the application for the license and does not confer eligibility of an applicant determined otherwise ineligible for issuance of a license. The license shall contain a statement in bold print that the issuance of a license does not

imply asbestos indemnification coverage.

(2) The department shall deny a license application if the department determines that the applicant has not demonstrated the ability to comply with either of the following:

(a) The applicable requirements and procedures established by the department and the board under this act.

(b) Other state and federal law pertaining to the health and safety aspects of asbestos demolition, renovation, and encapsulation.

(3) Beginning the effective date of the amendatory act that added this subsection and notwithstanding any other provision of this act, if the department fails to issue or deny a license within the time required by this section, the department shall return the license fee and shall reduce the license fee for the applicant's next renewal application, if any, by 15%. The failure to issue a license within the time required under this section does not allow the department to otherwise delay the processing of the application, and that application, upon completion, shall be placed in sequence with other completed applications received at that same time. The department shall not discriminate against an applicant in the processing of the application based upon the fact that the license fee was refunded or discounted under this subsection.

(4) Beginning October 1, 2005, the director of the department shall submit a report by December 1 of each year to the standing committees and appropriations subcommittees of the senate and house of representatives concerned with asbestos and regulatory issues. The director shall include all of the following information in the report concerning the preceding fiscal year:

(a) The number of initial and renewal applications the department received and completed within the time period described in this section.

(b) The number of applications denied.

(c) The number of applicants not issued a license within the 60-day time period and the amount of money returned to licensees under subsection (3).

(5) If the department denies a license, the department shall return to the applicant the application fee, less \$25.00 subject to subsection (3).

(6) Proceedings for the denial of a license under this act shall be in accordance with the administrative procedures act of 1969.

(7) As used in this section and section 209, "completed application" means an application complete on its face and submitted with any applicable licensing fees as well as any other information, records, approval, security, or similar item required by law or rule from a local unit of government, a federal agency, or a private entity but not from another department or agency of the state of Michigan.

**History:** 1986, Act 135, Eff. July 2, 1986;—Am. 1998, Act 132, Imd. Eff. June 24, 1998;—Am. 2004, Act 261, Imd. Eff. July 23, 2004.

### **338.3213 Terms and conditions of license.**

Sec. 213. In granting a license, the department may, following review by the director of the department, impose reasonable terms and conditions to ensure continuous compliance with the requirements of this act.

**History:** 1986, Act 135, Eff. July 2, 1986.

**Compiler's note:** Sec. 317 of this act provides: "The licensing provisions of this act shall take effect 3 months after the effective date of this act."

### **338.3215 Revocation or suspension of license.**

Sec. 215. The department may revoke or suspend a license as provided under the administrative procedures act of 1969.

**History:** 1986, Act 135, Eff. July 2, 1986.

**Compiler's note:** Sec. 317 of this act provides: "The licensing provisions of this act shall take effect 3 months after the effective date of this act."

### **338.3217 Duration of license; conditions to renewal.**

Sec. 217. (1) Unless the department revokes or suspends a license, the license shall remain in effect for 1 year from the date of issuance.

(2) The department shall renew a license annually if the asbestos abatement contractor satisfies the following conditions:

(a) Submits a completed application for a renewal on forms provided by the department no sooner than 90 days before the license expires and not later than 30 days before the license expires. An application for renewal that is received after the time period described in this subdivision shall be treated as an initial application and shall require payment of an initial license fee, rather than a renewal license fee.

(b) Pays to the department the license renewal fee as specified in section 209.

(c) Has complied with all applicable requirements of this act and the rules promulgated under this act.

**History:** 1986, Act 135, Eff. July 2, 1986;—Am. 1998, Act 132, Imd. Eff. June 24, 1998.

### **338.3219 Responsibility for removal of asbestos.**

Sec. 219. If the contract does not provide for asbestos abatement, a construction contractor or construction subcontractor who contracts to provide an improvement to real property shall not be responsible to provide for the removal of asbestos discovered in the course of providing the improvement to the property. This section shall not apply to construction contractor and construction subcontractor contracts entered into prior to the effective date of this act.

**History:** 1986, Act 135, Eff. July 2, 1986.

**Compiler's note:** Sec. 317 of this act provides: "The licensing provisions of this act shall take effect 3 months after the effective date of this act."

### **338.3220 Asbestos abatement project; notice; fees; asbestos abatement fund; report; emergencies.**

Sec. 220. (1) An asbestos abatement contractor shall notify the department in writing of all of the following at least 10 days before beginning an asbestos abatement project exceeding 10 linear feet or 15 square feet, or both, of friable asbestos materials:

- (a) The name and address of the owner of the building or structure.
- (b) The location of the building or structure where the asbestos abatement project will be performed.
- (c) The schedule for the starting and completion of the asbestos abatement project which may not exceed 1 year in length.
- (d) The amount of friable asbestos materials that will be removed or encapsulated.

(2) If during the course of a project and after a written contract is executed, a business entity that is exempt from licensure under section 207(2) and whose primary licensed trade is not that of an asbestos abatement contractor discovers that the removal or encapsulation of asbestos in an amount exceeding 10 linear feet or 15 square feet, or both, is required, that business entity shall notify the department of the asbestos abatement project before asbestos removal begins. Not more than 10 days after the discovery, the business entity shall provide written notification to the department in the manner described in subsection (1)(a) to (d).

(3) An asbestos abatement contractor providing written notification to the department pursuant to subsection (1) for an asbestos abatement project shall include a fee equal to 1% of the price of the contract for the asbestos abatement project and shall make available upon the request of the department a copy of the contract for the asbestos abatement project. All fees collected pursuant to this subsection shall be deposited in the asbestos abatement fund created in subsection (5).

(4) In the case of a business entity that provides notice under subsection (2) for an asbestos abatement project that is incidental to the business entity's primary licensed trade and where asbestos is actually removed by that business entity, the primary licensed trade contractor shall include a fee of 1% of the asbestos abatement project portion of the contract price and shall make available upon the request of the department a copy of that portion of the contract covering the asbestos abatement. All fees collected pursuant to this subsection shall be deposited in the asbestos abatement fund created in subsection (5).

(5) The asbestos abatement fund is created and shall exist in the state treasury and shall receive revenue as provided in this act and other revenue as the legislature may provide. The state treasurer shall direct the investment of the fund. All interest and earnings of the fund shall be retained by the fund. Money in the fund at the close of the fiscal year shall remain in the fund and shall not revert to the general fund.

(6) Money in the asbestos abatement fund created in subsection (5) shall be used by the department only for the asbestos-related responsibilities of the department under this act which includes, but is not limited to, the inspection of asbestos abatement projects and the education of asbestos abatement contractors. It does not include use of the fund by the department for asbestos abatement projects on state owned property.

(7) Not later than October 1 of each year, the department shall report to the legislature and the applicable committees in the house of representatives and the senate on the amount of money generated by the fees charged under this section. The report shall include the number of asbestos abatement projects inspected and the number of citations issued for violations of this act and other applicable laws, rules, and regulations.

(8) Emergency asbestos abatement projects resulting from equipment failure or malfunctions are exempt from the 10-day written advance notice imposed under this section. The written notice in emergency situations shall be provided within 48 hours after the commencement of the asbestos abatement project except that the business entity shall contact the department telephonically immediately or as soon as possible after the discovery of the emergency situation.

**History:** Add. 1990, Act 2, Imd. Eff. Feb. 12, 1990;—Am. 1993, Act 55, Imd. Eff. June 8, 1993;—Am. 1998, Act 132, Imd. Eff. June 24, 1998.  
Rendered Thursday, December 20, 2012



### **338.3221 Post abatement air monitoring check; maximum level of asbestos fibers.**

Sec. 221. (1) Except as provided by this subsection, a building or structure owner or lessee shall have a post abatement air monitoring check performed by a qualified neutral party completely independent of the asbestos abatement contractor at all asbestos abatement project sites involving a negative pressure enclosure as specified by 29 C.F.R. 1926.1101(g)(5)(i) that involve 10 or more linear feet or 15 or more square feet of friable asbestos materials. If the asbestos abatement contractor and the building or structure owner or lessee agree, the owner or lessee may have the post abatement air monitoring check required by this subsection performed by in-house personnel or by the asbestos abatement contractor.

(2) Whenever feasible, unless waived by the building or structure owner or lessee, the post abatement air monitoring check required by this section shall make use of aggressive air sampling methods as described in unit III.B.7.d. to appendix A to subpart E of part 763 of title 40 of the code of federal regulations, which is adopted in this act by reference.

(3) Upon request by the department, a post abatement air monitoring check taken pursuant to this section shall be reported to the department.

(4) After completion of the asbestos abatement project, the level of asbestos fibers per cubic centimeter of air that are more than 5 micrometers in length when sampled and analyzed according to method 7400 entitled "fibers" issued by the national institute of occupational safety and health (NIOSH) on 2/15/84 and revised on 5/15/89 which was published in the NIOSH manual of analytical methods, 3rd edition, shall not exceed 0.05 asbestos fibers at the asbestos abatement project site.

**History:** Add. 1993, Act 55, Imd. Eff. June 8, 1993;—Am. 1998, Act 132, Imd. Eff. June 24, 1998.

## **CHAPTER III**

### **338.3301 Duties of department.**

Sec. 301. The department, with the advice of the board, shall do all of the following:

(a) Administer this act.

(b) Issue licenses.

(c) Promulgate rules as may be necessary for the orderly conduct of its affairs in relation to this act and for the administration of this act pursuant to the administrative procedures act of 1969.

**History:** 1986, Act 135, Eff. July 2, 1986.

**Compiler's note:** Sec. 317 of this act provides: "The licensing provisions of this act shall take effect 3 months after the effective date of this act."

For transfer of authority, powers, duties, functions, and responsibilities of the asbestos abatement contractors licensing board to the director of the Michigan state department of public health, see E.R.O. No. 1994-1, compiled at MCL 333.26322 of the Michigan Compiled Laws.

### **338.3303 Receiving or initiating complaints of alleged violations.**

Sec. 303. The department shall receive or initiate complaints of alleged violations of this act or rules promulgated under this act and take action with respect to alleged violations or complaints as prescribed by this act.

**History:** 1986, Act 135, Eff. July 2, 1986.

**Compiler's note:** Sec. 317 of this act provides: "The licensing provisions of this act shall take effect 3 months after the effective date of this act."

### **338.3305 Investigation; grounds for denying, suspending, or revoking license; applicability.**

Sec. 305. (1) The department, in its own discretion, upon a recommendation by the board, or upon the written complaint of an aggrieved party or of a state agency or political subdivision, may investigate the acts of an asbestos abatement contractor under this act. After an investigation, the department may deny, suspend, or revoke a license issued under this act if an asbestos abatement contractor is found to be not in compliance with this act or the rules promulgated under this act. In addition, the department may deny, suspend, or revoke a license for any of the following:

(a) A willful or negligent act that causes any person to be exposed to asbestos in violation of this act, a rule promulgated under this act, or other state or federal law pertaining to the public health and safety aspects of asbestos demolition, renovation, and encapsulation.

(b) Falsification of records.

(c) Continued failure to obtain or renew a license.

(d) Deliberate misrepresentation of an act in applying for a license.

(e) Permitting any person who has not received the proper training and certification under state or federal



law to come in contact with asbestos or be responsible for an asbestos abatement project.

(2) If the license of a business entity is denied, suspended, or revoked under this act, the denial, suspension, or revocation applies to each partner, trustee, director, officer, or person exercising control of the business entity.

**History:** 1986, Act 135, Eff. July 2, 1986;—Am. 1993, Act 55, Imd. Eff. June 8, 1993.

**Compiler's note:** Sec. 317 of this act provides: "The licensing provisions of this act shall take effect 3 months after the effective date of this act."

### **338.3306 Issuance of subpoena by circuit court.**

Sec. 306. Upon application by the attorney general or a party to a contested case, the circuit court may issue a subpoena requiring a person to appear before a hearings examiner in the contested case or before the department in an investigation and be examined with reference to a matter within the scope of that contested case or investigation and to produce books, papers, or documents pertaining to that contested case or investigation.

**History:** Add. 1993, Act 55, Imd. Eff. June 8, 1993.

### **338.3307 Monetary civil penalties; issuance, contents, and delivery of citation.**

Sec. 307. (1) The department, upon recommendation by the board, shall promulgate pursuant to the administrative procedures act of 1969, a schedule of monetary civil penalties of not more than \$10,000.00 for each violation or day that the violation continues which may be assessed for a specified violation of this act or a rule promulgated under this act. For a violation of the licensing provision in section 207, the department shall establish monetary civil penalties in substantial compliance with the United States environmental protection agency's civil penalty policy for asbestos demolition and renovation but not more than \$25,000.00 for each violation or day that the violation continues.

(2) If the department believes that a person has violated this act or a rule promulgated under this act, the department may issue a citation at that time or not later than 90 days after discovery of the alleged violation. The citation shall be written and shall state with particularity the nature of the violation, including reference to the section of this act or the rule alleged to have been violated, the civil penalty established for the violation, if any, and the right to appeal the citation pursuant to section 309. The citation shall be personally delivered or sent by registered mail to the alleged violator.

**History:** 1986, Act 135, Eff. July 2, 1986.

**Compiler's note:** Sec. 317 of this act provides: "The licensing provisions of this act shall take effect 3 months after the effective date of this act."

### **338.3309 Petition for administrative hearing; notice; attendance of employee representative; affirming, dismissing, or modifying citation; judicial review; finality, payment, and recovery of civil penalty; conduct of administrative hearings.**

Sec. 309. (1) Not later than 20 days after receipt of a citation issued pursuant to section 307, the alleged violator may petition the department for an administrative hearing which shall be held before the board or the board's designated representative within 30 days after receipt of the petition. The department shall notify the alleged violator's employees or employee representative that an administrative hearing will be held and the date, time, and place of the hearing. The alleged violator shall permit the attendance of an employee representative at the administrative hearing. After the administrative hearing, the director of the department may affirm, dismiss, or modify the citation.

(2) An alleged violator aggrieved by a decision of the director of the department under this section may petition the circuit court of the county in which the violation was alleged to have occurred for review. The petition shall be filed not later than 60 days following receipt of the director's final decision.

(3) A civil penalty becomes final if a petition for an administrative hearing or review is not received within the time specified in this section. A civil penalty imposed under this act shall be payable to the department for deposit with the general fund. A civil penalty may be recovered in a civil action brought in the county in which the violation occurred or the defendant resides.

(4) Administrative hearings under this section shall be conducted pursuant to the administrative procedures act of 1969.

**History:** 1986, Act 135, Eff. July 2, 1986.

**Compiler's note:** Sec. 317 of this act provides: "The licensing provisions of this act shall take effect 3 months after the effective date of this act."

### **338.3311 Violation as misdemeanor; penalty; prosecution.**

Sec. 311. Notwithstanding the provisions of sections 307 and 309, any asbestos abatement contractor who engages in the trade or business of asbestos abatement without a license as provided for by this act or any person who violates this act or any rules promulgated under this act and who fails to correct the violation after notice is guilty of a misdemeanor, punishable by a fine of not more than \$500.00, and upon conviction for a subsequent offense, not more than \$1,000.00, or imprisonment for not more than 6 months, or both. A violation of this act may be prosecuted by either the attorney general or the prosecuting attorney of the judicial district in which the violation was committed.

**History:** 1986, Act 135, Eff. July 2, 1986.

**Compiler's note:** Sec. 317 of this act provides: "The licensing provisions of this act shall take effect 3 months after the effective date of this act."

### **338.3313 Application of other sanctions, penalties, or provisions not precluded.**

Sec. 313. The application of sanctions under this act shall not preclude the application of other sanctions, penalties, or provisions of any other federal, state, or political subdivision.

**History:** 1986, Act 135, Eff. July 2, 1986.

### **338.3315 Annual report.**

Sec. 315. The department shall submit to the legislature and the governor an annual report on the status of the licensing of asbestos abatement contractors.

**History:** 1986, Act 135, Eff. July 2, 1986.

### **338.3317 Effective date of licensing provisions.**

Sec. 317. The licensing provisions of this act shall take effect 3 months after the effective date of this act.

**History:** 1986, Act 135, Eff. July 2, 1986.

### **338.3319 Conditional effective date.**

Sec. 319. This act shall not take effect unless Senate Bill No. 770 of the 83rd Legislature is enacted into law.

**History:** 1986, Act 135, Eff. July 2, 1986.

**Compiler's note:** Senate Bill No. 770, referred to in Sec. 319, was filed with the Secretary of State on July 2, 1986, and became P.A. 1986, No. 147, Imd. Eff. July 2, 1986.

## **ASBESTOS WORKERS ACCREDITATION ACT**

### **Act 440 of 1988**

AN ACT to provide for the accreditation of persons who perform asbestos-related work in schools, school buildings, and public and commercial buildings; to prescribe powers and duties of certain state agencies and officers; to prescribe remedies and penalties; and to assess certain fees.

**History:** 1988, Act 440, Imd. Eff. Dec. 27, 1988;—Am. 1995, Act 127, Imd. Eff. June 30, 1995.

*The People of the State of Michigan enact:*

#### **338.3401 Short title.**

Sec. 1. This act shall be known and may be cited as the “asbestos workers accreditation act”.

**History:** 1988, Act 440, Imd. Eff. Dec. 27, 1988.

**Compiler's note:** For transfer of powers and duties of the division of occupational health in the bureau of environmental and occupational health, with the exception of dry cleaning unit, from the department of public health to the director of the department of labor, see E.R.O. No. 1996-1, compiled at MCL 330.3101 of the Michigan Compiled Laws.

#### **338.3402 Definitions.**

Sec. 2. As used in this act:

- (a) “ACBM” means asbestos-containing building material.
- (b) “Asbestos” means a group of naturally occurring minerals that separate into fibers, including chrysotile, amosite, crocidolite, anthophyllite asbestos, tremolite asbestos, and actinolite asbestos.
- (c) “Asbestos model accreditation plan” means the asbestos model accreditation plan issued by the environmental protection agency, appendix C to subpart E of part 763 of title 40 of the code of federal regulations.
- (d) “Asbestos-related work” means an activity or task performed by a person working with asbestos in buildings, including, but not limited to, inspection, management plan development, the design or conduct of response actions, and remedial work.
- (e) “Certificate of accreditation” or “certificate of reaccreditation” means a numbered document issued by the director as provided in section 13 to a person who possesses the necessary qualifications and who successfully completes the initial training and examination or refresher training required by this act.
- (f) “Day of training” means the equivalent of 8 hours, including breaks and lunch that do not exceed 1 hour.
- (g) “Department” means the department of consumer and industry services.
- (h) “Director” means the director of consumer and industry services or his or her authorized representative.
- (i) “Inspection” means an activity undertaken in a school building or public and commercial building to determine the presence or location or to assess the condition of friable or nonfriable ACBM or suspected ACBM, whether by visual or physical examination or by collecting samples of material. Inspection includes reinspection of known or assumed ACBM that has been previously identified. Inspection does not include any of the following:
  - (i) Periodic surveillance of the type described in 40 C.F.R. 763.92(b) conducted solely for the purpose of recording or reporting a change in the condition of known or assumed ACBM.
  - (ii) An inspection performed by employees or agents of federal, state, or local government solely for the purpose of determining compliance with applicable statutes or regulations.
  - (iii) A visual inspection of the type described in 40 C.F.R. 763.90(i) performed solely for the purpose of determining completion of response actions.
  - (iv) A limited scope inspection associated with a remodeling, renovation, operation, or maintenance activity in a public and commercial building that involves not more than 2 homogeneous areas as defined in 40 C.F.R. 763.83 and not more than 6 bulk samples collected in a randomly distributed manner.
- (j) “Interior space” means an enclosed portion of a public and commercial building, including, but not limited to, an exterior hallway, connecting structure, portico, or mechanical system used to condition an enclosed space.
- (k) “Person” means an individual, partnership, association, corporation, public or private agency, or other legal entity. Person does not include a homeowner performing asbestos-related work within his or her own home.
- (l) “Public and commercial building” means the interior space of a building that is not a school building, a residential apartment building of fewer than 10 units, or a detached single family home. Public and commercial building includes, but is not limited to, all of the following:

- (i) Industrial and office buildings.
- (ii) Residential apartment buildings and condominiums of 10 or more dwelling units.
- (iii) Government-owned buildings.
- (iv) Colleges and universities.
- (v) Museums.
- (vi) Airports.
- (vii) Hospitals.
- (viii) Churches.
- (ix) Preschools.
- (x) Stores.
- (xi) Warehouses.
- (xii) Factories.
- (m) "School" means a private or public elementary or secondary institution of learning including grades kindergarten through 12.
- (n) "School building" means 1 or more of the following at a school:
  - (i) A structure suitable for use as a classroom, including a school laboratory, library, eating facility, or food preparation facility.
  - (ii) A gymnasium or other facility that is specially designed for athletic or recreational activities or for an academic course in physical education.
  - (iii) A facility used for the instruction or housing of students for the purpose of administration of educational or research programs.
  - (iv) A maintenance, storage, or utility facility, including a hallway essential to the operation of a facility or structure identified in subparagraph (i), (ii), or (iii).
  - (v) A portico or covered exterior hallway or walkway.
  - (vi) An exterior portion of a mechanical system.
- (o) "Year of experience in asbestos-related work" means a year of work in which at least 25% of the individual's working time was spent on asbestos-related work, or an equivalent amount of work over more than 1 year's time if it was conducted after January 1, 1983.

**History:** 1988, Act 440, Imd. Eff. Dec. 27, 1988;—Am. 1995, Act 127, Imd. Eff. June 30, 1995;—Am. 1998, Act 133, Imd. Eff. June 24, 1998.

### **338.3403 Asbestos-related work in school or public and commercial buildings requiring certificate of accreditation and annual reaccreditation; applicability of section to certain asbestos work.**

Sec. 3. (1) A person shall not perform the following asbestos-related work in a school building or a public and commercial building in this state unless that person receives a certificate of accreditation and maintains annual reaccreditation through training, examination, and continuing education under this act:

- (a) Inspect for asbestos-containing materials in a school building or a public and commercial building, except for a person who is certified by the American board of industrial hygiene as a certified industrial hygienist under standards acceptable to the department.
- (b) Prepare an asbestos management plan for a school building.
- (c) Design a response action beyond the scope of a small-scale, short-duration operation, maintenance and repair activity, or a response action to a major fiber release episode, as those terms are defined in the asbestos model accreditation plan.
- (d) Conduct a response action beyond the scope of a small-scale, short-duration operation, maintenance and repair activity, or an activity that involves a major fiber release episode, as those terms are defined in the asbestos model accreditation plan.

(2) This section does not apply to class II asbestos work that only involves the removal or disturbance of 1 generic category of building material, class III asbestos work, or class IV asbestos work that is not performed in a regulated area, as those terms are defined in the occupational safety and health administration's standards for occupational exposure to asbestos in the construction industry, 59 F.R. 1926.1101, p. 41132 (August 10, 1994).

**History:** 1988, Act 440, Imd. Eff. Dec. 27, 1988;—Am. 1995, Act 127, Imd. Eff. June 30, 1995.

### **338.3404 Completion of initial training required for accreditation; length of initial training course; refresher training course required for reaccreditation.**

Sec. 4. (1) A person who seeks accreditation to perform asbestos-related work in a school building or a public and commercial building in this state is required to complete initial training under this act. This initial

training shall provide education in asbestos-containing materials inspection, management plan development, and response action technology.

(2) The length of the initial training course required for accreditation under this act shall vary by discipline as follows:

(a) An asbestos inspector shall complete a 3-day training course and successfully pass an examination.

(b) An asbestos management planner shall complete the inspector training course as prescribed by subdivision (a) plus an additional 2 days of training devoted to management planning and shall successfully pass an examination on each course of training.

(c) An asbestos abatement project designer shall complete not less than 3 days of training and successfully pass an examination.

(d) An asbestos abatement contractor or supervisor shall complete a 5-day training course and successfully pass an examination.

(e) An asbestos abatement worker shall complete a 4-day training course and successfully pass an examination.

(3) A person who seeks reaccreditation under this act to perform asbestos-related work in a school building or a public and commercial building in this state shall complete a 1-day annual refresher training course, except that an asbestos inspector is only required to complete a 1/2-day annual refresher training course.

**History:** 1988, Act 440, Imd. Eff. Dec. 27, 1988;—Am. 1995, Act 127, Imd. Eff. June 30, 1995.

### **338.3405 Certificate of accreditation; certificate of reaccreditation.**

Sec. 5. (1) A person who meets the requirements of this act and who completes the initial training and passes the examination required under section 4 shall receive a certificate of accreditation from the director in accordance with section 13. The certificate of accreditation shall authorize the person to perform asbestos-related work in a school building or a public and commercial building in this state for a period of 1 year after its issuance.

(2) A person who completes the refresher training course required under section 4 shall receive an annual certificate of reaccreditation from the director in accordance with section 13. The certificate of reaccreditation shall authorize the person to perform asbestos-related work in a school building or a public and commercial building in this state for a period of 1 year after its issuance.

**History:** 1988, Act 440, Imd. Eff. Dec. 27, 1988;—Am. 1995, Act 127, Imd. Eff. June 30, 1995.

### **338.3406 Providing initial training courses, examinations, and refresher training courses; denial, revocation, or suspension of approval.**

Sec. 6. (1) The initial training courses, examinations, refresher training courses, and certificates of successful course completion required under this act shall be provided by the department or a person approved by the department to sponsor the training and examinations and issue the certificates of successful course completion of a training course in accordance with the initial training, examinations, continuing education components, and the certificate issuance requirements of the asbestos model accreditation plan.

(2) The department may deny, revoke, or suspend approval of a person approved under this section for 1 or more of the following reasons:

(a) Misrepresentation of the extent of department approval of a training course.

(b) Failure to submit required information or notifications in a timely manner.

(c) Failure to maintain records required by law.

(d) Falsification of accreditation records, instructor qualifications, or other accreditation information.

(e) Failure to adhere to the training standards and requirements of this act or of the asbestos model accreditation plan.

**History:** 1988, Act 440, Imd. Eff. Dec. 27, 1988;—Am. 1995, Act 127, Imd. Eff. June 30, 1995.

### **338.3407 Accreditation as asbestos inspector, management planner, or project designer; minimum experience.**

Sec. 7. The following minimum experience is required of a person seeking accreditation as an asbestos inspector, management planner, or project designer:

(a) An asbestos inspector shall possess either of the following:

(i) Not less than 1 year of experience in asbestos-related work or in general building inspections related to environmental and health concerns.

(ii) Not less than 5 years of supervisory experience in school building or public and commercial building operations and maintenance.

(b) Both an asbestos management planner and an asbestos abatement project designer shall possess either

of the following:

- (i) Not less than 2 years of experience in asbestos-related work.
- (ii) Not less than 5 years of supervisory experience in school building or public and commercial building operations and maintenance.

**History:** 1988, Act 440, Imd. Eff. Dec. 27, 1988;—Am. 1995, Act 127, Imd. Eff. June 30, 1995.

### **338.3408 Complaints of alleged violations; actions.**

Sec. 8. The department shall receive or initiate complaints of alleged violations of this act and shall take appropriate actions with respect to those alleged violations or complaints.

**History:** 1988, Act 440, Imd. Eff. Dec. 27, 1988.

### **338.3409 Investigations; grounds for denial, suspension, or revocation of certificate of accreditation or reaccreditation.**

Sec. 9. (1) The department, on its own initiative or upon the written complaint of an aggrieved party, a state agency, or political subdivision, may investigate the acts of a person accredited under this act. The department may deny, suspend, or revoke a certificate of accreditation or reaccreditation under this act under the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, if a person is found not to be in compliance with this act or other applicable state or federal laws.

(2) The department may deny, suspend, or revoke a certificate of accreditation or reaccreditation for 1 or more of the following reasons:

(a) A willful or negligent action in violation of this act or other state or federal laws pertaining to the public health and safety aspects of asbestos-related work in a school building or a public and commercial building.

(b) Falsification of records.

(c) Failure to obtain or renew a certificate of accreditation.

(d) Deliberate misrepresentation in applying for accreditation or reaccreditation.

(e) Permitting a person who has not received the proper training or accreditation under this act to be responsible for asbestos-related work in a school building or a public and commercial building.

(f) Permitting the duplication or use of one's own accreditation certificate by another person.

(g) Obtaining accreditation from a training provider that does not have approval to offer training for that particular discipline from either the environmental protection agency or a state that has an approval program as stringent as this act.

**History:** 1988, Act 440, Imd. Eff. Dec. 27, 1988;—Am. 1995, Act 127, Imd. Eff. June 30, 1995.

### **338.3410 Reciprocal agreements with other states.**

Sec. 10. (1) The department shall seek to obtain written reciprocal agreements with other states that have accreditation and reaccreditation requirements that equal or exceed the requirements of this act for a person who performs asbestos-related work in a school building or a public and commercial building.

(2) Following the department's execution of a written reciprocal agreement with another state, a person who has been properly accredited by that state shall not be required to receive the initial training or take the examination to receive a certificate of accreditation required by this act to perform asbestos-related work in a school building or a public and commercial building in this state. That person shall submit a certificate of successful completion of training from the other state and the fee as required by section 14.

(3) For a person described in subsection (2), reaccreditation under sections 4 and 5 may only be obtained by submitting a copy of the certificate of successful completion of a refresher training course from another state and the fee as required by section 14.

**History:** 1988, Act 440, Imd. Eff. Dec. 27, 1988;—Am. 1995, Act 127, Imd. Eff. June 30, 1995.

### **338.3411 Sponsorship of training course or refresher training course; application for approval; requirements; fee; information; determination as to approval or denial; qualifications of instructors; receipt of completed application; issuance of license within certain period of time; report; "completed application" defined.**

Sec. 11. (1) A person desiring to sponsor a training course or refresher training course for those disciplines required to be accredited under this act may apply for department approval on forms supplied by the department. The department shall approve a training course or a refresher training course that meets the requirements for the course as prescribed by section 6.

(2) An applicant desiring to sponsor a training course shall submit for each course all of the following information and fees to the department:



- (a) The course sponsor's name, address, and telephone number.
  - (b) A list of any states that currently approve the training course, including information as to whether the training course has been approved by the United States environmental protection agency.
  - (c) The course curriculum.
  - (d) A letter from the training course sponsor clearly indicating compliance of the course with the requirements of this act for all of the following:
    - (i) The length of training in days.
    - (ii) The amount and type of hands-on training.
    - (iii) The length, format, and passing score of the examination.
    - (iv) The topics covered in the course.
  - (e) A copy of all course materials, including student manuals, instructor notebooks, handouts, and all other materials that the department may request.
  - (f) A detailed statement about the development of the examination used in the course.
  - (g) The names and qualifications of course instructors.
  - (h) A description and example of the certificate of successful course completion issued to students who attend the course and pass the examination that satisfies the requirements of the asbestos model accreditation plan.
  - (i) An initial application fee of \$400.00 and, after the initial year, an annual renewal fee of \$200.00. If the application is for renewal, the application and annual fee shall be submitted not earlier than 90 days before the course expires but not later than 30 days before the course expires. An application for renewal that is submitted later than the time period specified in this subdivision shall be treated by the director as an initial application for course renewal and shall require payment of the initial application fee, rather than the renewal fee.
- (3) An applicant desiring to sponsor a refresher training course in a discipline required to be accredited under this act shall supply all of the following information to the department:
- (a) The length of training.
  - (b) The topics covered in the course.
  - (c) A copy of all course materials.
  - (d) The names and qualifications of course instructors.
  - (e) A description and an example of the certificate of successful completion of the training course that satisfies the requirements of the asbestos model accreditation plan.
- (4) Within 60 calendar days after receipt of the appropriate fee and a completed application from a person desiring to sponsor training courses as specified in this section, the department shall make a determination as to the approval or denial of the application and shall notify the applicant in writing of its determination. Receipt of the application is considered the date the application is received by any agency or department of the state of Michigan.
- (5) The instructor of a course offered under this section shall have academic credentials or field experience, or both, in asbestos abatement.
- (6) Beginning the effective date of the amendatory act that added this subsection, the department shall issue an initial or renewal license within the time period prescribed by subsection (4). If the application is considered incomplete by the department, the department shall notify the applicant in writing, or make the information electronically available, within 15 days after receipt of the incomplete application, describing the deficiency and requesting the additional information. The 60-day period described in subsection (4) is tolled upon notification by the department of a deficiency until the date the requested information is received by the department. The determination of the completeness of an application does not operate as an approval of the application for the license and does not confer eligibility of an applicant determined otherwise ineligible for issuance of a license.
- (7) If the department fails to issue or deny a license within the time required by subsection (4), the department shall return the license fee and shall reduce the license fee for the applicant's next renewal application, if any, by 15%. The failure to issue a license within the time required under this section does not allow the department to otherwise delay the processing of the application, and that application, upon completion, shall be placed in sequence with other completed applications received at that same time. The department shall not discriminate against an applicant in the processing of the application based upon the fact that the license fee was refunded or discounted under this subsection.
- (8) Beginning October 1, 2005, the director of the department shall submit a report by December 1 of each year to the standing committees and appropriations subcommittees of the senate and house of representatives concerned with occupational issues. The director shall include all of the following information in the report concerning the preceding fiscal year:

(a) The number of initial and renewal applications the department received and completed within the 60-day time period described in subsection (4).

(b) The number of applications denied.

(c) The number of applicants not issued a license within the 60-day time period and the amount of money returned to licensees and registrants under subsection (7).

(9) As used in this section, "completed application" means an application complete on its face and submitted with any applicable licensing fees as well as any other information, records, approval, security, or similar item required by law or rule from a local unit of government, a federal agency, or a private entity but not from another department or agency of the state of Michigan.

**History:** 1988, Act 440, Imd. Eff. Dec. 27, 1988;—Am. 1995, Act 127, Imd. Eff. June 30, 1995;—Am. 1998, Act 133, Imd. Eff. June 24, 1998;—Am. 2004, Act 262, Imd. Eff. July 23, 2004.

### **338.3412 Training course; notice of scheduled courses; inspection; effect of noncompliance; record keeping.**

Sec. 12. (1) A training course sponsor shall submit to the department a notice of scheduled courses not less than 7 calendar days before the start of those courses, indicating starting and ending dates and times, location, and instructors. A training course sponsor shall also advise the department of cancellation of a course no less than 1 day before the indicated start date of that course.

(2) A training course sponsor shall permit department representatives, as part of a training course inspection, to attend, evaluate, and monitor a training course without charge to the department. The department shall not provide advance notice of a training course inspection. The department may revoke or suspend approval of a training course if the inspection of a field site, conducted under a training course inspection, indicates that a training course is not in compliance with the requirements of section 6.

(3) A training course sponsor shall satisfy the record-keeping requirements for a training provider described in unit I.F. of the asbestos model accreditation plan.

**History:** 1988, Act 440, Imd. Eff. Dec. 27, 1988;—Am. 1995, Act 127, Imd. Eff. June 30, 1995.

### **338.3413 Numbered certificate of successful course completion; issuance; contents; issuance of numbered certificate of accreditation or certificate of reaccreditation; list of persons issued certificates.**

Sec. 13. (1) The training course sponsor shall issue a numbered certificate of successful initial or refresher course completion to a student who meets the requirements of this act and who successfully completes the training and passes the training course's examination required under this act. The numbered certificate of successful course completion shall include the name of the student, the social security number of the student, the course completed, the dates of the course and the examination, a statement certifying that the student passed the examination, an expiration date that is 1 year after the date on which the person successfully completed the course and examination, and the name, address, and telephone number of the training course sponsor that issued the certificate.

(2) Upon the department's receipt of the fee required under section 14 and a copy of a certificate of successful course completion under subsection (1) or of a copy of a certificate of successful refresher course completion, the director shall issue a numbered certificate of accreditation or certificate of reaccreditation to the student. The numbered certificate of accreditation or certificate of reaccreditation shall include the name of the student, the course completed, and the annual expiration date for accreditation or reaccreditation.

(3) Within 10 calendar days after issuing certificates of successful course completion, the sponsor of an approved training course shall supply the department with a list of those persons to whom the certificates of successful completion were issued. The list shall be maintained by the department and shall include each person's name, social security number, and home address, the discipline for which the certificate was issued, and the date of the certificate.

**History:** 1988, Act 440, Imd. Eff. Dec. 27, 1988;—Am. 1995, Act 127, Imd. Eff. June 30, 1995;—Am. 1998, Act 133, Imd. Eff. June 24, 1998.

### **338.3414 Submission of application and annual fee; fee schedule; failure to submit annual fee; disposition of fees.**

Sec. 14. (1) A person desiring accreditation or reaccreditation from the director under section 13 shall submit to the department an application for accreditation or reaccreditation on forms provided by the department. The applicant shall include, with the application, payment of the annual fee designated in subsection (3), subject to any refund or discount prescribed under section 11(7).

(2) If the application is for reaccreditation, the application and annual fee shall be submitted not earlier

than 90 days before the accreditation expires but not later than 30 days before the accreditation expires. An application for reaccreditation that is submitted later than the time period specified in this subsection shall be treated by the director as an initial application for accreditation, and shall require payment of the accreditation fee, rather than the reaccreditation fee.

(3) The fee schedule for accreditation or reaccreditation is as follows:

	Accreditation	Reaccreditation
(a) Asbestos inspectors	\$150.00	\$75.00
(b) Asbestos management planners	\$150.00	\$75.00
(c) Asbestos abatement project designers	\$150.00	\$75.00
(d) Asbestos abatement contractors and supervisors	\$50.00	\$25.00
(e) Asbestos abatement workers	\$50.00	\$25.00

(4) Failure to submit the annual fee as part of the application for accreditation constitutes just cause for the director to deny issuance to a person of a certificate of accreditation or reaccreditation under section 13.

(5) All fees collected by the department under subsection (1) shall be deposited in the asbestos abatement fund created in section 220 of the asbestos abatement contractors licensing act, 1986 PA 135, MCL 338.3220.

**History:** 1988, Act 440, Imd. Eff. Dec. 27, 1988;—Am. 1995, Act 127, Imd. Eff. June 30, 1995;—Am. 1998, Act 133, Imd. Eff. June 24, 1998;—Am. 2004, Act 262, Imd. Eff. July 23, 2004.

### **338.3415 Failure to have certificate of accreditation or reaccreditation at job site.**

Sec. 15. A person who is accredited under this act to perform asbestos-related work in a school building or a public and commercial building shall have in his or her possession the initial and current certificate of accreditation or reaccreditation at the location where he or she is conducting asbestos-related work. A person's failure to have in his or her possession the certificate of accreditation or reaccreditation at the job site where he or she is working may result in the suspension or revocation of that person's certificate of accreditation.

**History:** 1988, Act 440, Imd. Eff. Dec. 27, 1988;—Am. 1995, Act 127, Imd. Eff. June 30, 1995.

### **338.3415a Disclosure of inspector's financial interest or relationship; performance of asbestos-related work as condition of conducting inspection prohibited; right of contractor to conduct inspection; "person" defined.**

Sec. 15a. (1) An asbestos inspector who has conducted an inspection under this act shall disclose orally and in writing to the person requesting the inspection the inspector's financial interest in or financial relationship to a person who engages in the business of performing asbestos-related work.

(2) A person who engages in asbestos-related work shall not require that the inspector who performs an inspection under this act also perform the asbestos-related work recommended in the inspector's report as a condition of conducting the inspection.

(3) After an inspection is conducted under this act and a report is prepared that indicates the need for asbestos-related work to be done, a person who contracts to do that asbestos-related work may conduct his or her own inspection either prior to performing the asbestos-related work or after performing that work in order to determine whether the work was successful, or both.

(4) For purposes of this section, "person" means an individual, partnership, association, corporation, public or private agency, or other legal entity.

**History:** Add. 1995, Act 127, Imd. Eff. June 30, 1995.

### **338.3416 Repealed. 1995, Act 127, Imd. Eff. June 30, 1995.**

**Compiler's note:** The repealed section pertained to interim accreditation.

### **338.3417 Violation; civil penalties.**

Sec. 17. A person who violates this act shall be subject to civil penalties for each violation or each day that a violation continues in accordance with the following schedule:

(a) For a first violation	\$ 2,000.00
(b) For second violation	\$ 5,000.00
(c) For a third or subsequent violation	\$ 10,000.00

**History:** 1988, Act 440, Imd. Eff. Dec. 27, 1988.

### **338.3418 Appropriation.**

Sec. 18. The legislature shall annually appropriate to the department an amount sufficient to administer and

enforce this act.

**History:** 1988, Act 440, Imd. Eff. Dec. 27, 1988.

**REGULATED OCCUPATION SUPPORT ENFORCEMENT ACT**  
**Act 236 of 1996**

AN ACT to provide for the suspension of certain occupational licenses under certain circumstances; to require social security numbers on applications for occupational licenses as required by federal law; and to prescribe the powers and duties of certain state agencies and departments.

**History:** 1996, Act 236, Eff. Jan. 1, 1997;—Am. 1998, Act 331, Imd. Eff. Aug. 10, 1998.

*The People of the State of Michigan enact:*

**338.3431 Short title.**

Sec. 1. This act shall be known and may be cited as the “regulated occupation support enforcement act”.

**History:** 1996, Act 236, Eff. Jan. 1, 1997.

**338.3432 Definitions.**

Sec. 2. As used in this act:

(a) “License” means a certificate, registration, or license issued by an occupational regulatory agency that allows an individual to engage in a regulated occupation or that allows an individual to use a specific title in the practice of an occupation, profession, or vocation.

(b) “Occupational regulatory agency” means a department, bureau, or agency of this state that has regulatory authority over a regulated occupation.

(c) “Office of the friend of the court” means an agency created by section 3 of the friend of the court act, Act No. 294 of the Public Acts of 1982, being section 552.503 of the Michigan Compiled Laws.

(d) “Regulated occupation” means an occupation, profession, or vocation that requires a license as a predicate for the practice of the occupation, profession, or vocation or that provides for the use of a specific title in the practice of the occupation, profession, or vocation.

**History:** 1996, Act 236, Eff. Jan. 1, 1997.

**338.3433 Suspension order issued pursuant to support and parenting time enforcement act; compliance.**

Sec. 3. An occupational regulatory agency shall comply with a suspension order issued as provided in the support and parenting time enforcement act, Act No. 295 of the Public Acts of 1982, being sections 552.601 to 552.650 of the Michigan Compiled Laws, within 7 business days after receipt of the suspension order.

**History:** 1996, Act 236, Eff. Jan. 1, 1997.

**338.3434 Rescission of suspension order; procedure to reinstate license.**

Sec. 4. An order rescinding a suspension order issued under the support and parenting time enforcement act, Act No. 295 of the Public Acts of 1982, being sections 552.601 to 552.650 of the Michigan Compiled Laws, is effective upon its entry by the court and payment by the licensee of the customary reinstatement fee, if any, charged by the occupational regulatory agency. The occupational regulatory agency shall reinstate the license of a licensee whose suspension order is rescinded within 7 business days after receipt of the rescission order and payment of the appropriate reinstatement fee. An occupational regulatory agency shall send a notice of the license reinstatement to the licensee upon reinstatement.

**History:** 1996, Act 236, Eff. Jan. 1, 1997.

**338.3434a Social security number; inclusion on license application form; disclosure prohibited; violation; penalty; exception.**

Sec. 4a. (1) In order to facilitate the enforcement and administration of this act and as required to comply with federal law, an occupational regulatory agency shall require each applicant for a license or renewal of a license to include his or her social security number on the application form. An occupational regulatory agency shall not issue or renew a license unless the applicant's social security number is on file with the occupational regulatory agency as required to comply with federal law. An occupational regulatory agency shall not display a licensee's social security number on the licensee's occupational license.

(2) A person shall not intentionally disclose, in a manner not authorized by law or rule, a social security number collected as required by this section. A violation of this subsection is a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$500.00, or both. A second or subsequent violation of this subsection is a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$2,000.00, or both.

(3) A requirement under this section to include a social security number on an application does not apply to an applicant who demonstrates he or she is exempt under law from obtaining a social security number or to an applicant who for religious convictions is exempt under law from disclosure of his or her social security number under these circumstances. The occupational regulatory agency shall inform the applicant of this possible exemption.

**History:** Add. 1998, Act 331, Imd. Eff. Aug. 10, 1998.

**Compiler's note:** Enacting section 2 of 1998 PA 331 provides:

"Enacting section 2. The family independence agency shall request from the federal government an exemption from the provisions regarding the recording of social security numbers added by this 1998 amendatory act, which are intended to be used for the collection of child support, as required by federal law in order for this state to receive certain federal funds. Upon the granting of the exemption, those provisions referred to by this enacting section shall not be utilized or enforced by the state or a local governmental entity."

### **338.3435 Effective date.**

Sec. 5. This act shall take effect January 1, 1997.

**History:** 1996, Act 236, Eff. Jan. 1, 1997.

### **338.3436 Conditional effective date.**

Sec. 6. This act shall not take effect unless all of the following bills of the 88th Legislature are enacted into law:

- (a) Senate Bill No. 881.
- (b) House Bill No. 5384.
- (c) House Bill No. 5386.
- (d) House Bill No. 5387.
- (e) House Bill No. 5388.
- (f) House Bill No. 5389.

**History:** 1996, Act 236, Eff. Jan. 1, 1997.



**MICHIGAN IMMIGRATION CLERICAL ASSISTANT ACT**  
**Act 161 of 2004**

AN ACT to regulate certain transactions involved in immigration matters and the providing of services in those matters; to set standards and security requirements involving certain immigration matters and persons engaged in immigration matters; to create a list of immigration clerical assistants; to provide for certain powers and duties for certain state agencies; and to provide for remedies and penalties.

**History:** 2004, Act 161, Eff. Oct. 1, 2004.

*The People of the State of Michigan enact:*

**338.3451 Short title.**

Sec. 1. This act shall be known and may be cited as the “Michigan immigration clerical assistant act”.

**History:** 2004, Act 161, Eff. Oct. 1, 2004.

**338.3453 Definitions.**

Sec. 3. As used in this act:

(a) “Business relationship” means a relationship with any of the following:

(i) An individual serving as a designated school official or principal designated school official as defined by the United States citizenship and immigration services, but only where acting within the scope of authority in that capacity on behalf of the designated educational institution.

(ii) An individual serving as a responsible officer or alternate responsible officer as defined by the United States department of state, but only where acting within the scope of authority in that capacity on behalf of the designated exchange visitor program.

(iii) An individual who is regularly employed by an employer other than a sole proprietorship in a position that requires that employee to process immigration matters on behalf of and as a representative of the employer relative to employment by an employee or prospective employee only with the employer and who receives no compensation, directly or indirectly, from those employees or prospective employees.

(iv) An individual who is employed by a federal or state elected official involved in the processing of a visa application or petition on behalf of or as a representative of a constituent.

(b) “Compensation” means money, donations, property, promise of payment, or anything else of value required in exchange for a person's services.

(c) “Consumer” means a person who utilizes or seeks to utilize the services of an immigration clerical assistant.

(d) “Department” means the department of labor and economic growth.

(e) “Immigration clerical assistant” means any individual providing or offering to provide services, for compensation, relating to any immigration matter.

(f) “Immigration matter” means any matter affecting the immigrant status, nonimmigrant status, or citizenship status of any individual and includes, but is not limited to, federal or state administrative or court proceedings or the filing of accompanying documents in those proceedings, or both.

(g) “List” means the list of immigration clerical assistants established by the department.

(h) “Services” means any action taken on behalf of any consumer for the benefit of that consumer or another individual regarding the immigrant status, nonimmigrant status, or citizenship status of any consumer or other individual, and includes, but is not limited to, the following:

(i) Transcribing responses onto government agency forms on behalf of a consumer relating to an immigration matter.

(ii) Translating information from a government agency form to a language other than English and translating responses on behalf of a consumer relating to an immigration matter.

(iii) Drafting or completing an application or other paper on behalf of a consumer in an immigration matter.

(iv) Giving advice to a consumer in an immigration matter.

(i) “Solicit” means any contact with a specific consumer by an immigration clerical assistant or his or her agent, representative, or employee regarding the provision of services, for compensation, regarding an immigration matter or the provision of services. Solicit does not include letters or advertising distributed generally to persons not known to need the services of an immigration clerical assistant.

**History:** 2004, Act 161, Eff. Oct. 1, 2004.

**338.3454 Individual providing immigration services or acting as immigration clerical**

**assistant; placement on list required.**

Sec. 4. An individual shall not provide services or offer to provide services, or act as an immigration clerical assistant, unless the individual is placed on the list established under this act or unless the individual is exempted under section 5 from placement on the list.

**History:** 2004, Act 161, Eff. Oct. 1, 2004.

**338.3455 Exemptions.**

Sec. 5. The following are exempt from this act:

(a) An attorney at law licensed to practice law in any state or territory of the United States and his or her legal and other support staff working under his or her direct supervision.

(b) A law student or law school graduate not yet admitted to the bar who is supervised by an attorney licensed to practice law in any state or territory of the United States.

(c) A reputable individual who has a personal, family, or business relationship with the individual subject to the immigration matter and is engaged in an immigration matter for that individual without compensation.

(d) A nonprofit religious, charitable, social service, or similar organization recognized by the board of immigration appeals, and any individual representing such an organization who has been accredited by the board of immigration appeals.

(e) Any individual representing or acting on behalf of an organization who performs only the following services:

(i) Translating documents from a language other than English into English in an immigration matter.

(ii) Properly notarizing signatures on documents in an immigration matter.

(iii) Referring the consumer to an attorney in an immigration matter.

(iv) Taking or arranging for the taking of photographs or fingerprints in an immigration matter.

(v) Arranging for the performance of medical testing and assisting with the obtaining of such medical examination results in an immigration matter.

(vi) Conducting English language and civics courses for consumers in an immigration matter.

(vii) Conducting educational or experiential evaluations, or combinations of educational and experiential evaluations, for consumers in an immigration matter.

(f) A nonprofit religious, charitable, social service, or similar organization that provides the services listed under subdivision (e) without compensation.

(g) A translation business that meets the following criteria:

(i) Was an active member of the American translators association on September 1, 2001, and abides by and is subject to its code of ethical practices.

(ii) Is incorporated.

(iii) Keeps commercial offices in the state of Michigan.

(iv) Derives 90% of its income from the translation business.

(v) Has sales exceeding \$100,000.00 per year in the translation business.

(vi) Was engaged in the translation business on September 1, 2001.

**History:** 2004, Act 161, Eff. Oct. 1, 2004.

**338.3457 Applicant for placement on list; fee; application form; bond; updating information.**

Sec. 7. (1) An immigration clerical assistant shall apply to the department for placement on the list established under section 9.

(2) An applicant for placement on the list shall pay the appropriate fee and submit in written, electronic, or other form acceptable to the department the application that shall include, at a minimum, the name, date of birth, residential and business addresses denoting a specific location other than a post office box, telephone number, facsimile number, and e-mail or website address.

(3) The applicant shall provide in a manner acceptable to the department the name of the bonding company issuing the bond required under this act and the number or other identifying information regarding the bond.

(4) An immigration clerical assistant placed on the list shall, upon change of any of the information submitted on the application under subsections (2) and (3), update that information and submit it to the department in a manner acceptable to the department within 14 days after the change.

**History:** 2004, Act 161, Eff. Oct. 1, 2004.

**338.3459 Immigration clerical assistant list; creation; establishment; availability; fees for development, maintenance, and administration of list; failure to renew placement resulting in removal; effect.**

Sec. 9. (1) There is created an immigration clerical assistant list in the department. Within 180 days after

the effective date of this act, the department shall establish the list as a fully functional program complying with the prescriptions of this section.

(2) The list shall be made available electronically or in written form to any member of the general public upon electronic or written request. The list shall include under each individual the individual's name, residential and business address denoting a specific location other than a post office box, telephone number, facsimile number, and e-mail or website address.

(3) In order to cover the costs of developing, maintaining, and administering the list, the department shall impose the following fees:

(a) A nonrefundable application fee of \$250.00 for any of the following:

(i) Original placement on the list for a period of 3 years.

(ii) Renewal applications received more than 60 days after the expiration date of placement on the list.

(iii) Application for reactivation of placement on the list that was removed by the department for noncompliance with this act or by an order of a court of competent jurisdiction.

(b) A nonrefundable renewal listing fee for a 3-year period in the amount of \$90.00.

(c) A nonrefundable late fee of \$20.00 for renewals received up to 60 days following the expiration date of placement on the list.

(d) A nonrefundable fee of \$20.00 for changes to a current placement on the list, including, but not limited to, address, name, or bond information.

(4) An individual who fails to renew his or her placement on the list on or before the expiration date may be removed from the list by the department and shall not provide services or act or offer to act as an immigration clerical assistant beyond the expiration date.

(5) An individual who is removed from the list for failure to renew his or her placement on the list or who is otherwise removed from the list by the department for noncompliance with this act or removed by order of a court of competent jurisdiction shall not provide services and shall not act or offer to act as an immigration clerical assistant.

**History:** 2004, Act 161, Eff. Oct. 1, 2004.

### **338.3461 Charge for services.**

Sec. 11. An immigration clerical assistant may charge the following for services:

(a) Not more than \$20.00 per page for translation of supporting documentation.

(b) Not more than \$10.00 per page to complete a government agency form.

(c) The amount allowed under law for notarial acts.

(d) A reasonable and fair fee for other services that include, but are not limited to, photocopying, mailing, and telephone calls.

**History:** 2004, Act 161, Eff. Oct. 1, 2004.

### **338.3463 Contract requirements.**

Sec. 13. (1) An immigration clerical assistant shall enter into a written contract with a consumer before any service is rendered and before accepting any compensation.

(2) The contract shall be written in English and shall include a written translation into the primary language understood by the consumer if the consumer is not a native speaker of English. The contract shall embody all the terms and conditions of the agreement to provide services, including, but not limited to, the following:

(a) The name and address of the immigration clerical assistant.

(b) The date and time of the transaction.

(c) A description of the services to be provided and the itemized cost of each service.

(d) The name and address of the bonding company or other surety that has issued the bond required under section 15.

(3) An immigration clerical assistant shall not orally amend or supplement the written contract and shall not make any statement that contradicts or is inconsistent with the terms of the written contract. A copy of the executed contract shall be provided to the consumer at the time of execution.

(4) The consumer has 72 hours from the execution of the contract to rescind the transaction. A notice of the consumer's right to rescind shall be included in the contract in English and shall be translated with substantially similar meaning into the primary language understood by the consumer in substantially the following form:

"You, the consumer, may cancel this transaction at any time prior to 72 hours following the date and time that this contract is signed by you. You may cancel this transaction, without any penalty or obligation, by writing "CANCEL" across your signature and returning a copy to the immigration clerical assistant or his/her

authorized representative.”.

(5) Upon rescission of the transaction, an immigration clerical assistant shall promptly return to the person so entitled to it any deposit, down payment, or other compensation received from or on behalf of the consumer and shall return to the consumer, or the individual upon whose behalf the consumer is acting, all original documents, including notices, letters, approvals, denials, receipts, or other correspondence received on behalf of the consumer in any immigration matter.

(6) The contract shall state in a prominent place, in type not smaller than 12-point font, a notice in English that shall be translated with substantially similar meaning into the primary language understood by the consumer, as follows:

“NOTICE: An immigration clerical assistant is NOT an attorney and is not authorized to provide legal services or offer legal advice of any kind.”.

**History:** 2004, Act 161, Eff. Oct. 1, 2004.

### **338.3465 Corporate surety or cash bond.**

Sec. 15. (1) An immigration clerical assistant shall file and maintain in force a corporate surety or cash bond conditioned upon the faithful and competent provision of services. The bond shall be in a form used by the issuer and acceptable to the department. The bond shall be in the sum of not less than \$50,000.00.

(2) The bond shall be for the benefit of a person damaged by fraud, misstatement, misrepresentation, unlawful act or omission, or failure of the immigration clerical assistant or its agent, representative, or employee to provide services as promised. A person may bring an action upon the bond for damages as described in this subsection. The aggregate liability to all injured persons shall not exceed the sum of the bond.

(3) The surety on the bond shall have the right to cancel or terminate the bond upon giving 30 days' written notice to the person to whom it was issued and to the department and after that date shall be relieved of liability for a breach of condition occurring after the effective date of the cancellation or termination. The failure to give a new bond within 30 days after the notice to the department under this subsection operates as an automatic removal of the immigration clerical assistant's placement on the list. An action on the bond shall not be commenced after the expiration of 1 year after the effective date of the cancellation or termination of the bond.

(4) An immigration clerical assistant shall prominently display in his or her place of business the name of the bond company and the number or other identifying information regarding the bond.

**History:** 2004, Act 161, Eff. Oct. 1, 2004.

### **338.3467 Prohibited conduct.**

Sec. 17. (1) An immigration clerical assistant shall not do any of the following:

(a) Offer or give legal advice including, but not limited to, selecting the type of application or form to be submitted to a government agency, recommending a procedure to be followed in seeking a benefit under the immigration and nationality act, chapter 477, 66 Stat. 163, 8 USC 1101, et seq., and altering or deleting language on standard immigration forms.

(b) Engage in the unauthorized practice of law as determined by a court of competent jurisdiction.

(c) Represent that the offering or the provision of services is legal advice or legal services.

(d) Falsely represent that the offering or the provision of services is necessary.

(e) Falsely represent that the offering or the provision of services is in response to a request by or on behalf of a consumer.

(f) Represent that the life, safety, or welfare of the consumer and his or her family would be adversely affected if the services of an immigration clerical assistant are not provided.

(g) Fail to reveal a material fact regarding an immigration matter or regarding services, which fact could not be reasonably known to the consumer, the omission of which tends to mislead or deceive the consumer.

(h) Take advantage of a consumer's inability to protect his or her interests when the immigration clerical assistant knows or should reasonably know of a consumer's disability, illiteracy, or inability to understand the language of any documentation or government form.

(i) Regarding services not described in section 11, charge a consumer a price for services that is not reasonable under the circumstances.

(j) Make a false or fraudulent representation of fact or statement material to the services provided.

(k) Fail to reveal facts material to the services provided in light of representations of fact made in a positive manner.

(l) Engage in any method, act, or practice that is unfair or deceptive.

(m) Act as an intermediary between the consumer and the federal government in an immigration matter.

(n) Make any representation orally or in writing that the immigration clerical assistant guarantees or promises a specific immigration benefit or result.

(o) Represent or imply that the immigration clerical assistant will be able to obtain any special influence over, or treatment from, any government entity with respect to an immigration matter.

(p) Make a false statement or representation to the department as part of the application process for initial or renewal placement on the list.

(q) Use a term implying that the individual placed on the list is approved, certified, or licensed by the state of Michigan or the federal government.

(2) An immigration clerical assistant shall not, in any document, advertisement, stationery, letterhead, business card, or other comparable written material describing the role of the immigration clerical assistant, literally translate from English into another language terms or titles including, but not limited to, notary public, notary, licensed, attorney, lawyer, or any other term that implies that the person is an attorney. As used in this subsection, "literally translate" means the translation of a word or phrase without regard to the true meaning of the word or phrase in the language that is being translated.

**History:** 2004, Act 161, Eff. Oct. 1, 2004.

### **338.3469 Delivery of documents and forms.**

Sec. 19. (1) An immigration clerical assistant shall deliver to each consumer a copy of each document or form completed on behalf of a consumer. Each document and form executed or completed shall include the name, residential and business address denoting a specific location other than a post office box, telephone number, facsimile number, and e-mail or website address of the immigration clerical assistant.

(2) An immigration clerical assistant shall retain copies of all documents and forms completed or executed on behalf of a consumer, or the individual upon whose behalf the consumer is acting, for not less than 3 years.

(3) An immigration clerical assistant shall return all original documents of the consumer, or the individual upon whose behalf the consumer is acting, and not keep them in his or her possession.

(4) An immigration clerical assistant shall promptly deliver to each consumer, or the individual upon whose behalf the consumer is acting, all original documents, including notices, letters, approvals, denials, receipts, or other correspondence received on behalf of the consumer, or the individual upon whose behalf the consumer is acting, in any immigration matter. As used in this subsection, "promptly" means either of the following:

(a) In the case of correspondence from the agency of the federal government that requires a response within 30 days after receipt, within 7 days.

(b) In all other cases, within 14 days.

**History:** 2004, Act 161, Eff. Oct. 1, 2004.

### **338.3471 Violations; penalties; notice of noncompliance; exemption.**

Sec. 21. (1) A person who violates this act is guilty of the following:

(a) In the case of a first conviction, a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$1,000.00, or both.

(b) In the case of a second or subsequent conviction, a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$10,000.00, or both.

(2) A person injured by an immigration clerical assistant may bring an action in a court of competent jurisdiction for equitable relief or damages, or both. The court shall also grant a prevailing plaintiff reasonable attorney fees and costs and may order removal from the list for at least 5 years or as otherwise ordered by the court.

(3) A person who, upon information and belief, claims a violation of this act has been committed by an immigration clerical assistant may bring an action in a court of competent jurisdiction for equitable relief on behalf of the general public. The court shall award a prevailing plaintiff reasonable attorney fees and costs and may order removal from the list for at least 5 years or as otherwise ordered by the court.

(4) The remedies and penalties in this act are cumulative and use of 1 remedy under this act does not bar the use of any remedy allowed under the Michigan consumer protection act, 1976 PA 331, MCL 445.901 to 445.922, or the use of any other remedy allowed under law.

(5) Notwithstanding any other provision of this section, a first violation of the list requirement of section 7 or bonding requirement of section 15, or both, shall subject the immigration clerical assistant only to a notice of noncompliance issued by the department. The department shall issue the notice of noncompliance promptly, and the notice of noncompliance shall indicate a time period for compliance not to exceed 90 days. A second or subsequent violation of either or both of the requirements described in this subsection shall subject a person to the other provisions of this section.

(6) Upon notification of any kind to the department of an individual acting as an immigration clerical assistant without being placed on the list, failure to comply with the list requirements, or of the failure to be in compliance with the bonding requirement imposed under section 15, the department shall issue a notice of noncompliance to that individual.

(7) As a precondition to the prosecution of an individual under subsection (1) for failure of an individual acting as an immigration clerical assistant to be placed on the list, failure to comply with the list requirements, or for failure to comply with the bonding requirement under section 15, the complainant shall demonstrate that the department had sent a notice of noncompliance to the person alleged to have violated this act.

(8) An immigration clerical assistant that is acting on behalf of a tax-exempt nonprofit organization under section 501(c)(3) of the internal revenue code of 1986 that applies to and is placed on the list and complies with the bonding requirement of section 15 and the service charge requirements of section 11, or an employee or volunteer of such an organization, is exempt from this section.

**History:** 2004, Act 161, Eff. Oct. 1, 2004.



**EXECUTIVE REORGANIZATION ORDER**  
**E.R.O. No. 1991-9**

**338.3501 Transfer of occupational and health-related functions, boards, and commissions from department of licensing and regulation to department of commerce; transfer of department of insurance and office of the commissioner of insurance from the department of licensing and regulation to the department of commerce.**

WHEREAS, Article V, Section 2, of the Constitution of the State of Michigan of 1963, empowers the Governor to make changes in the organization of the Executive Branch or in the assignment of functions among its units which he considers necessary for efficient administration; and

WHEREAS, the Department of Licensing and Regulation was created by Act No. 380 of the Public Acts of 1965, as amended, being Section 16.101 et seq. of the Michigan Compiled Laws; and

WHEREAS, various occupational functions, boards, and commissions have been assigned or transferred to the Department of Licensing and Regulation; and

WHEREAS, the Department of Insurance and the Office of the Commissioner of Insurance have been transferred to the Department of Licensing and Regulation; and

WHEREAS, various health-related functions, boards, and commissions have been assigned to the Department of Licensing and Regulation; and

WHEREAS, it is necessary in the interests of efficient administration and effectiveness of government to effect changes in the organization of the Executive Branch of government.

NOW, THEREFORE, I, John Engler, Governor of the State of Michigan, pursuant to the powers vested in me by the Constitution of the State of Michigan of 1963, and the laws of the State of Michigan, do hereby order the following:

(1) Occupational Functions, Boards and Commissions:

(a) All the statutory authority, powers, duties, functions, and responsibilities, including the functions of budgeting, procurement, and management-related functions of the Department of Licensing and Regulation identified in the Occupational Code, Act No. 299 of the Public Acts of 1980, being Section 339.101 et seq. of the Michigan Compiled Laws, including the boards (as defined therein), are hereby transferred from the Department of Licensing and Regulation to the Department of Commerce by a Type II transfer, as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws; except that the boards (as defined therein), shall retain all of their statutory authority, powers, duties, functions, and responsibilities.

(b) All the statutory authority, powers, duties, functions, and responsibilities, including the functions of budgeting, procurement, and management-related functions of the Department of Licensing and Regulation identified in:

(i) State License Fee Act, Act No. 152 of the Public Acts of 1979, as amended, being Section 338.2201 et seq. of the Michigan Compiled Laws;

(ii) Construction Lien Act (recovery fund provisions only), Act No. 497 of the Public Acts of 1980, as amended, being Sections 570.1201 to 570.1207 of the Michigan Compiled Laws;

(iii) Building Contract Fund, Act No. 259 of the Public Acts of 1931, as amended, being Section 570.151 et seq. of the Michigan Compiled Laws;

(iv) Cemetery Regulation Act, Act No. 251 of the Public Acts of 1968, as amended, being Section 456.521 et seq. of the Michigan Compiled Laws;

(v) Ski Area Safety Act of 1962, Act No. 199 of the Public Acts of 1962, as amended, being Section 408.321 et seq. of the Michigan Compiled Laws;

(vi) Carnival-Amusement Safety Act of 1966, Act No. 225 of the Public Acts of 1966, as amended, being Section 408.651 et seq. of the Michigan Compiled Laws;

(vii) Forensic Polygraph Examiners Act, Act No. 295 of the Public Acts of 1972, as amended, being Section 338.1701 et seq. of the Michigan Compiled Laws; and

(viii) Prepaid Funeral Contract Funding Act, Act No. 255 of the Public Acts of 1986, being Section 328.211 et seq. of the Michigan Compiled Laws

are hereby transferred from the Department of Licensing and Regulation to the Department of Commerce by a Type II transfer, as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

(c) The Director of the Department of Commerce, as head of the Department of Commerce, shall provide executive direction and supervision for the implementation of the transfer.

(d) All records, personnel, property, and unexpended balances of appropriations, allocations, and other

funds used, held, employed, available, or to be made available to the Department of Licensing and Regulation for the activities transferred by this Order are hereby transferred to the Department of Commerce.

(e) The Department of Commerce shall make such internal organizational changes as may be administratively necessary to complete the realignment of responsibilities prescribed by this Section of this Order.

(f) The heads of the Department of Licensing and Regulation and the Department of Commerce shall immediately initiate coordination between their departments to facilitate the transfer and develop a memorandum of record identifying any pending settlements, issues of compliance with applicable federal and State laws and regulations, or other obligations to be resolved by the Department of Licensing and Regulation.

(g) All rules, orders, contracts, and agreements relating to the assigned functions lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended, or repealed.

(h) Any suit, action, or other proceeding lawfully commenced by, against, or before any entity affected by this Order shall not abate by reason of the taking of effect of this Order. Any suit, action, or other proceeding may be maintained by, against, or before the appropriate successor of any entity affected by this Order.

(2) Department of Insurance, Office of the Commissioner of Insurance:

(a) The Department of Insurance and the Office of the Commissioner of Insurance created by Sections 200 and 202 of Act No. 218 of the Public Acts of 1956, being Sections 500.200 and 500.202 of the Michigan Compiled Laws, as modified by Section 329 of Act 380 of the Public Acts of 1965, being Section 16.329 of the Michigan Compiled Laws, and by Executive Order No. 1980-1A (E.R.O. No. 1980-1), and the authority, powers, duties, functions, and responsibilities of the Department of Insurance and the Office of the Commissioner of Insurance (including, without limitation, the authority, powers, duties, functions, and responsibilities under Act No. 218 of the Public Acts of 1956, as amended, being Section 500.110 et seq. of the Michigan Compiled Laws; Act No. 66 of the Public Acts of 1933, being Section 550.1 et seq. of the Michigan Compiled Laws; Act No. 233 of the Public Acts of 1984, as amended, being Section 550.51 et seq. of the Michigan Compiled Laws; Act No. 266 of the Public Acts of 1895, as amended, being Section 550.101 et seq. of the Michigan Compiled Laws; Act No. 143 of the Public Acts of 1935, being Section 550.231 et seq. of the Michigan Compiled Laws; Act No. 64 of the Public Acts of 1984, being Section 550.251 et seq. of the Michigan Compiled Laws; Act No. 125 of the Public Acts of 1963, as amended, being Section 550.351 et seq. of the Michigan Compiled Laws; Act No. 173 of the Public Acts of 1958, as amended, being Section 550.601 et seq. of the Michigan Compiled Laws; Act No. 388 of the Public Acts of 1913, as amended, being Section 550.701 et seq. of the Michigan Compiled Laws; Act No. 218 of the Public Acts of 1984, being section 550.901 et seq. of the Michigan Compiled Laws; Act No. 252 of the Public Acts of 1986, being Section 550.1001 et seq. of the Michigan Compiled Laws; Act No. 350 of the Public Acts of 1980, as amended, being Section 550.1101 et seq. of the Michigan Compiled Laws; and Sections 333.21001 to 333.21099 of Act No. 368 of the Public Acts of 1978, being Sections 333.21001 to 333.21099 of the Michigan Compiled Laws), are hereby transferred from the Department of Licensing and Regulation to the Department of Commerce by a Type I transfer, as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

(b) The Director of the Department of Commerce, as head of the Department of Commerce, shall provide executive direction and supervision for the implementation of the transfer. The Department of Insurance and the Commissioner of Insurance shall exercise their prescribed statutory powers, duties, and functions of rule making, licensing, and registration, including the prescription of rules, rates, regulations, standards, and adjudications independently of the Director of the Department of Commerce. The budgeting, procurement, and related management functions of the Department of Insurance and the Commissioner of Insurance shall be performed under the direction and supervision of the Director of the Department of Commerce as the head of the Department of Commerce.

(c) All records, personnel, property, and unexpended balances of appropriations, allocations, and other funds used, held, employed, available, or to be made available to the Department of Licensing and Regulation for the activities transferred by this Order are hereby transferred to the Department of Commerce.

(d) The Department of Commerce shall make such internal organizational changes as may be administratively necessary to complete the realignment of responsibilities prescribed by this Section of this Order.

(e) The heads of the Department of Licensing and Regulation and the Department of Commerce shall immediately initiate coordination between their departments to facilitate the transfer and develop a memorandum of record identifying any pending settlements, issues of compliance with applicable federal and State laws and regulations, or other obligations to be resolved by the Department of Licensing and Regulation.

(f) All rules, orders, contracts, and agreements relating to the assigned functions lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended, or repealed.

(g) Any suit, action, or other proceeding lawfully commenced by, against, or before any entity affected by this Order shall not abate by reason of the taking effect of this Order. Any suit, action, or other proceeding may be maintained by, against, or before the appropriate successor of any entity affected by this Order.

**(3) Health-Related Functions, Boards, and Commissions:**

(a) All statutory authority, powers, duties, functions, and responsibilities, including the functions of budgeting, procurement, and management-related functions of the Department of Licensing and Regulation identified in Article 15 of Act No. 368 of the Public Acts of 1978, as amended, being Sections 333.16101 to 333.18838 of the Michigan Compiled Laws, Sections 7101 to 7545 of Act No. 368 of the Public Acts of 1978, as amended, being Sections 333.7101 to 333.7545 of the Michigan Compiled Laws, and Act No. 152 of the Public Acts of 1979, being Section 338.2201 et seq. of the Michigan Compiled Laws, including the council, boards, and task forces (as defined therein), are hereby transferred to the Department of Commerce by a Type II transfer, as defined in Section 3 of Act No. 380 of the Public Acts of 1965, being Section 16.103 of the Michigan Compiled Laws; except that the councils, boards, and task forces (as defined therein) shall retain all of their statutory authority, powers, duties, functions, and responsibilities.

(b) The Director of the Department of Commerce, as head of the Department of Commerce, shall provide executive direction and supervision for the implementation of the transfer.

(c) All records, personnel, property, and unexpended balances of appropriations, allocations, and other funds used, held, employed, available, or to be made available to the Department of Licensing and Regulation for the activities transferred by this Order are hereby transferred to Department of Commerce.

(d) The Department of Commerce shall make such internal organizational changes as may be administratively necessary to complete the realignment of responsibilities prescribed by this Section of this Order.

(e) The heads of the Department of Licensing and Regulation and the Department of Commerce shall immediately initiate coordination between their departments to facilitate the transfer and develop a memorandum of record identifying any pending settlements, issues of compliance with applicable federal and State laws and regulations, or other obligations to be resolved by the Department of Licensing and Regulation.

(f) All rules, orders, contracts, and agreements relating to the assigned functions lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended, or repealed.

(g) Any suit, action or other proceeding lawfully commenced by, against, or before any entity affected by this Order shall not abate by reason of the taking effect of this Order. Any suit, action, or other proceeding may be maintained by, against, or before the appropriate successor of any entity affected by this Order.

In fulfillment of the requirement of Article V, Section 2, of the Constitution of the State of Michigan of 1963, the provisions of this Executive Order shall become effective September 1, 1991, at 12:01 a.m.

**History:** 1991, E.R.O. No. 1991-9, Eff. Sept. 1, 1991.

**Compiler's note:** For transfer of powers and duties of the bureau of health services from the department of consumer and industry services to the director of the department of community health by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For abolishment of the state board of forensic polygraph examiners and transfer of its powers and duties to the department of labor and economic growth, see E.R.O. No. 2007-18, compiled at MCL 445.2024.

**STATE PLUMBING ACT**  
**Act 733 of 2002**

AN ACT to regulate the installation, alteration, maintenance, improvement, and inspection of plumbing; to provide certain powers and duties for certain state agencies and departments; to create a plumbing board; to define plumbing, plumbing contractors, and the classification of plumbers and to set standards for those classifications; to provide for the licensing and regulation of classes of plumbers and plumbing contractors; to prescribe fees and the disposition of money derived from those fees; to provide for the promulgation of rules; to prescribe remedies and penalties; and to repeal acts and parts of acts.

**History:** 2002, Act 733, Eff. Mar. 31, 2003.

*The People of the State of Michigan enact:*

**338.3511 Short title.**

Sec. 1. This act shall be known and may be cited as the “state plumbing act”.

**History:** 2002, Act 733, Eff. Mar. 31, 2003.

**338.3513 Definitions; A to C.**

Sec. 3. As used in this act:

- (a) “Apprentice plumber” means an individual registered under this act as an apprentice.
- (b) “Board” means the state plumbing board created in section 13.
- (c) “Building sewer” means that part of the drainage system which extends from the end of the building drain and conveys its discharge to a public sewer, private sewer, individual sewage disposal system, or other point of disposal.
- (d) “Censure” means an expression of disapproval of a licensee's or registrant's professional conduct, which conduct is not necessarily a violation of this act or a rule promulgated or an order issued under this act.
- (e) “Code” means the state construction code provided for in section 4 of the Stille-DeRossett-Hale single state construction code act, MCL 125.1504, or a part of the code that is of limited application and includes a modification of or amendment to the code.

**History:** 2002, Act 733, Eff. Mar. 31, 2003.

**338.3515 Definitions; D to G.**

Sec. 5. As used in this act:

- (a) “Department” means the department of consumer and industry services.
- (b) “Director” means the director of the department of consumer and industry services or an authorized representative of the director.
- (c) “Domestic water treatment and filtering equipment” means residential water treatment and filtering equipment used in 1-family and 2-family dwellings.
- (d) “Enforcing agency” means an enforcing agency as defined in section 2a of the Stille-DeRossett-Hale single state construction code act, MCL 125.1502a.
- (e) “Governmental subdivision” means a governmental subdivision as defined in section 2a of the Stille-DeRossett-Hale single state construction code act, MCL 125.1502a.

**History:** 2002, Act 733, Eff. Mar. 31, 2003.

**338.3517 Definitions; J to M.**

Sec. 7. As used in this act:

- (a) “Journey plumber” means an individual, other than a plumbing contractor or master plumber, who is qualified to engage in the practical installation of plumbing and who is licensed as a journey plumber.
- (b) “License” means the document issued to a person under this act enabling that person to use a designated title and practice an occupation, which practice would otherwise be prohibited by this act.
- (c) “Licensee” means a person who has been issued a license under this act.
- (d) “Master plumber” means an individual possessing the necessary skills and qualifications to plan and supervise the installation of plumbing and who is licensed as a master plumber.
- (e) “Minor repair” means a repair which involves only the clearance of stoppages, repair, or replacement of a faucet, valve, reinstallation of that same plumbing fixture provided that no modifications are made to the plumbing system, or residential domestic water treatment and filtering equipment. Minor repair does not include any of the following:
  - (i) The repair or replacement of a backflow preventer and air admittance valves.

(ii) A repair or replacement that is only a part of a larger or major renovation or repair.

**History:** 2002, Act 733, Eff. Mar. 31, 2003.

### **338.3519 Definitions; P.**

Sec. 9. As used in this act:

(a) "Person" means an individual, sole proprietor, partnership, association, corporation, governmental subdivision, public or private school, or public or private organization.

(b) "Plumbing" means the practice, materials, and fixtures, in or adjacent to a building, structure, or premises, used in the installation, maintenance, extension, or alteration of all piping, fixtures, plumbing appliances, plumbing appurtenances, as defined by the code, in connection with the sanitary drainage or storm drainage facilities, plumbing venting systems, medical gas systems, backflow preventers, and public or private water supply systems.

(c) "Plumbing contractor" means a licensed master plumber or a person who employs a licensed master plumber full-time to directly supervise the installation of plumbing as his or her representative engaged in the business of plumbing for a fixed sum, price, fee percentage, valuable consideration, or other compensation and who is licensed as a plumbing contractor.

(d) "Probation" means a sanction which permits a board to evaluate over a period of time a licensee's or registrant's fitness to practice an occupation regulated by this act.

**History:** 2002, Act 733, Eff. Mar. 31, 2003.

### **338.3521 Definitions; R to W.**

Sec. 11. As used in this act:

(a) "Restitution" means the requirement that a person found to be in violation of this act, a rule promulgated under this act, or an order issued under this act has caused monetary damage to another and that the violator will be required to compensate the injured party by an amount equal to the amount of the monetary damage caused.

(b) "Stille-DeRossett-Hale single state construction code act" means the Stille-DeRossett-Hale single state construction code act, 1972 PA 230, MCL 125.1501 to 125.1531.

(c) "Water service pipe" means the pipe from the water main or other source of potable water supply to the water distributing system of the building served.

**History:** 2002, Act 733, Eff. Mar. 31, 2003.

### **338.3523 State plumbing board; creation; membership; appointment; qualifications; terms; compensation; meetings; quorum; election of officers; public meeting; availability of writings; access to files; maintenance; rules; licensure examination.**

Sec. 13. (1) There is created a state plumbing board within the department. The governor, with the advice and consent of the senate, shall appoint 5 United States citizens who are residents of the state, 2 of whom shall be licensed plumbing contractors who hold a master's license. One shall be a licensed master plumber securing permits, and 1 shall be a licensed journey plumber, each having 10 years' experience, and a person representative of the general public, who with the director of the department of environmental quality or his or her authorized representative, a member or employee of the drinking water and radiologic protection division of the department of environmental quality, selected by the director of the department of environmental quality as voting ex officio members, shall constitute the plumbing board. Upon the expiration of the term of office of each person so appointed, the governor shall, on or before July 1 in each year, appoint a successor to hold office for a term of 3 years.

(2) Per diem compensation of the members of the board, other than the director and the director of the department of environmental quality or their authorized representatives and the member or employee of the drinking water and radiologic protection division of the department of environmental quality, and the schedule for reimbursement of expenses shall be established annually by the legislature.

(3) The board shall meet as often as necessary to fulfill its duties under this act, but shall meet not less than 4 times a year. A majority of the members appointed and serving shall constitute a quorum. An approval, decision, or ruling of the board does not become effective unless supported by a majority of the members present constituting a quorum. A member of the board shall not vote by proxy.

(4) At the first meeting of each calendar year, the board shall elect 1 member as chairperson, another as vice-chairperson, another as secretary, and other officers as it determines appropriate, for the terms and with the duties and powers as the board determines. The chairperson, vice-chairperson, and secretary shall be elected from those members appointed to the board by the governor.

(5) The business which the board may perform shall be conducted at a public meeting of the board held in



compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. Public notice of the time, date, and place of the meeting shall be given in the manner required by the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. A member of the board who intentionally violates this subsection is subject to the penalties prescribed in the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

(6) A writing prepared, owned, used, in the possession of, or retained by the board in the performance of an official function shall be made available to the public in compliance with the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246. The department shall maintain physical possession of the files of the board and shall ensure that applicable laws concerning public access to the files are met.

(7) The board shall recommend to the state construction code commission the promulgation of rules necessary for the safe design, construction, installation, alteration, and inspection of plumbing. The board may also recommend to the state construction code commission, after testing and evaluation, that it issue certificates of acceptability under the code for a material, product, method of manufacturing, or method of construction or installation of plumbing equipment.

(8) The department, in consultation with the board, shall promulgate rules pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, for the administration of this act and to effectuate the purposes of this act including, but not limited to, the establishing of standards for license classifications under this act; the examination and licensing of plumbing contractors, master plumbers, and journey plumbers; and for the registration of plumbers' apprentices. Before an examination or other test required under this act is administered, the board, in consultation with the department, shall review and approve the form and content of the examination or test. Each examination for a license as a plumbing contractor, master plumber, or journey plumber shall be conducted by the board and the department, acting jointly.

**History:** 2002, Act 733, Eff. Mar. 31, 2003.

### **338.3525 Plumbing; license required; exceptions.**

Sec. 15. (1) A person shall not engage in or work at the business of a plumbing contractor, master plumber, journey plumber, or apprentice plumber unless licensed or registered by the department. Except as provided in subsections (2), (3), (4), and (5), plumbing shall be performed by a licensed master or journey plumber. A licensed master plumber shall be in charge and responsible for proper installation and conformance with the code. Plumbing shall not be performed unless the plumbing contractor who is responsible has secured a permit from the state or a governmental subdivision authorized to issue permits.

(2) A license is not required for the following work:

(a) Minor repair work.

(b) The installation of a building sewer or water service pipe provided that a permit is secured from the responsible enforcing agency and inspections are performed. The installations shall comply with the applicable code.

(c) The installation of domestic water treatment and filtering equipment that requires modification to an existing cold water distribution supply and associated waste piping in buildings if a permit is secured, required inspections performed, and the installation complies with the applicable code. If the enforcing agency determines a violation exists, it shall be corrected by the responsible installer.

(3) A homeowner may install his or her own plumbing, building sewer, or private sewer in his or her single-family dwelling if a permit is secured.

(4) The installation of medical gas piping providing the installation shall be performed under the supervision of a licensed plumbing contractor.

(5) This act does not prevent a person from performing any activities within the scope of licensure or registration under any other licensure or registration act or applicable codes for that licensed or registered professional adopted pursuant to law.

**History:** 2002, Act 733, Eff. Mar. 31, 2003.

### **338.3527 Plumbing contractor, master plumber, and journey plumber's examination.**

Sec. 17. (1) The board shall grant licenses or registrations to qualified applicants for examination or registration. The character, experience, and fitness of an applicant for examination or registration shall also be taken into consideration. Each applicant shall be of good moral character as defined and determined under 1974 PA 381, MCL 338.41 to 338.47.

(2) The plumbing contractor's examination shall consist of, but not be limited to, questions designed to test an individual's knowledge of this act, any rules promulgated under this act, the Stille-DeRossett-Hale single state construction code act, and the administration and enforcement procedures of the code. The department shall arrange for plumbing contractor examinations to be held in the months of March, June, September, and



December of each year in the Lower Peninsula and shall arrange for at least 1 plumbing contractor examination to be held in the Upper Peninsula each year.

(3) The master plumber's examination shall consist of, but not be limited to, oral and written tests and shall cover the science and practice of plumbing, knowledge of the state plumbing code, laws, rules, regulations, interpretation of charts and blueprints, and plans of plumbing installations. The department shall arrange for master plumber examinations in the months of March, June, September, and December of each year in the Lower Peninsula and shall arrange for at least 1 master plumber's examination to be held in the Upper Peninsula each year.

(4) The journey plumber's examination shall consist of, but not be limited to, oral, written, and practical tests and shall cover the theory and practice of plumbing and knowledge of the state plumbing code, rules, and regulations. The department shall arrange for journey plumber examinations to be held in the months of March, June, September, and December of each year in the Lower Peninsula and shall arrange for at least 1 journey plumber's examination to be held in the Upper Peninsula each year.

(5) An application to take an examination shall be submitted to the department no later than 20 days before the date of the examination.

**History:** 2002, Act 733, Eff. Mar. 31, 2003.

### **338.3529 Plumbing contractor, master, or journey licensure; conditions for examination.**

Sec. 19. Applicants for plumbing contractor, master, or journey licensure under this act may sit for examination upon doing both of the following:

(a) Filing an application with the department, on a form provided by the department, with the appropriate nonrefundable examination fee prescribed in section 31.

(b) Establishing, in a manner satisfactory to the board, the experience requirement or an equivalent of that experience requirement for the particular class of licensure by use of a notarized statement from current and past employers and master plumbers.

**History:** 2002, Act 733, Eff. Mar. 31, 2003.

### **338.3531 Plumbing contractor's license; issuance; conditions; requirements.**

Sec. 21. (1) To qualify for a plumbing contractor license, the applicant must either hold a master plumber license or employ the holder of a master plumber license as his or her representative. Only an owner of a sole proprietorship or partnership, or an officer of a corporation or limited liability company, may apply for licensure as a plumbing contractor.

(2) The department shall issue a plumbing contractor's license to a person who does all of the following:

(a) Files a completed application on a form provided by the department that includes the following information:

(i) A statement listing the complete address of each place where the applicant has resided and has been engaged in business during the last 5 years including the length of residences and types of businesses engaged in or employments.

(ii) The name of the applicant, the name of the business, and the location of the place for which the license is desired.

(iii) The name of the business owner or president of the corporation and the name of the applicant, if different from the name of the business owner or president, and his or her title.

(iv) The name, residence address, and license number of the licensed master plumber who represents the person.

(b) Pays the examination fee prescribed in section 31 and passes an examination provided for by the board and the department.

(c) Pays the license fee prescribed in section 31.

(3) A licensed plumbing contractor may operate 1 or more branch offices in this state bearing the same firm name if a licensed master plumber is in charge and has the responsibility of supervision at each branch.

(4) If a license is issued to a plumbing contractor represented by a master plumber, the plumbing contractor and the master plumber are jointly and severally responsible for exercising the supervision or control of the plumbing operations necessary to secure full compliance with this act, the rules promulgated under this act, and all other laws and rules related to the installation of plumbing.

(5) Both a person other than a plumbing contractor and the master plumber are jointly and severally responsible for exercising the supervision or control of the plumbing operations necessary to secure full compliance with this act, the rules promulgated under this act, and all other laws and rules related to the installation of plumbing.

(6) If a plumbing contractor is represented by a licensed master plumber who ceases to represent the

plumbing contractor, the plumbing contractor has 30 days thereafter in which to designate another licensed master plumber as the representative of the plumbing contractor. The plumbing contractor shall notify the department in writing of the change.

(7) A licensed plumbing contractor shall display in a conspicuous place at the entrance of the place of business a sign bearing the company name and the name of the licensed master plumber and license number in letters not less than 3 inches high.

**History:** 2002, Act 733, Eff. Mar. 31, 2003;—Am. 2010, Act 150, Imd. Eff. Aug. 23, 2010.

### **338.3533 Master plumber's license; issuance; conditions; requirements.**

Sec. 23. (1) The department shall issue a master plumber's license to a person not less than 18 years of age who does all of the following:

- (a) Files a completed application on a form provided by the department.
- (b) Pays the examination fee prescribed in section 31 and passes an examination provided for by the board and the department.
- (c) Pays the license fee prescribed in section 31.
- (d) Holds a journey plumber license issued under this act or former 1929 PA 266 and has gained 4,000 hours' experience in work as a journey plumber over a period of not less than 2 years immediately preceding the date of his or her application.

(2) As a condition of renewal of a master plumber's license, the master plumber shall demonstrate the successful completion of a course, approved by the board, concerning any update or change in the code within 12 months after the update or change in that code. This requirement applies only during or after those years that the code is updated or changed.

(3) A licensed master plumber shall represent only 1 plumbing contractor at any given time.

(4) A master plumber who is also a plumbing contractor is only liable for payment of the plumbing contractor license fee.

(5) If a master plumber representing a plumbing contractor ceases to represent the plumbing contractor, the master plumber shall notify the department in writing within 30 days after the representation ceases.

**History:** 2002, Act 733, Eff. Mar. 31, 2003.

### **338.3535 Journey plumber's license; issuance; conditions; requirements.**

Sec. 25. (1) The department shall issue a journey plumber's license to a person not less than 18 years of age who does all of the following:

- (a) Files a completed application on a form provided by the department.
- (b) Pays the examination fee prescribed in section 31 and passes an examination provided for by the board and the department.
- (c) Pays the license fee prescribed in section 31.
- (d) Has at least 6,000 hours' experience gained over a period of not less than 3 years as an apprentice plumber in the practical installation of plumbing under the supervision of a master plumber.

(2) As a condition of renewal of a journey plumber's license, the journey plumber shall demonstrate the successful completion of a course, approved by the board, concerning any update or change in the code within 12 months after the update or change in that code. This requirement applies only during or after those years that the code is updated or changed.

**History:** 2002, Act 733, Eff. Mar. 31, 2003.

### **338.3537 Apprentice plumber; registration; requirements.**

Sec. 27. (1) An individual employed as an apprentice plumber shall register with the department on a form provided by the department within 30 days after employment.

(2) An apprentice registration is invalid after 5 years from the date of initial registration unless the registered apprentice applies for and takes the examination for journey license. The registration remains valid until either a license is issued or the apprentice fails to take the exam.

(3) Upon request by the apprentice to the board, the board may grant an extension of an apprentice registration for a period of time as determined appropriate by the board.

(4) An apprentice plumber shall, as his or her principal occupation, be engaged in learning and assisting in the installation of plumbing under the direct on-site jobsite supervision of a journey or master plumber.

**History:** 2002, Act 733, Eff. Mar. 31, 2003.

### **338.3539 Master plumber; inactive license; issuance as active; holding active master and journey plumber license.**

Sec. 29. (1) A person licensed as a master plumber may request that the master plumber license be retained by the department as an inactive license for a period not to exceed 3 years.

(2) An inactive master plumber license shall be issued as active upon the request of the licensee and the payment of the reinstatement fee as described in section 31 as long as the individual holds a journey plumber license and the individual's journey plumber license has been renewed each year.

(3) A person shall not simultaneously hold an active master and journey plumber license. An individual holding an active master plumber license may work as a journey plumber.

**History:** 2002, Act 733, Eff. Mar. 31, 2003.

**338.3541 License or registration renewal; fees; receipt of completed application; time period for issuance; report; waiver; "completed application" defined.**

Sec. 31. (1) A license or apprentice registration issued under this act must be renewed not more than 60 days after the renewal date. It is the responsibility of a licensee or registrant to renew a license or registration. The department shall send a renewal application to the last known address of a licensee or registrant on file with the department. Every holder of a license or registration issued under this act shall promptly notify the department of a change in his or her business or residence address. The failure of a licensee or registrant to notify the department of a change of address does not extend the expiration date of a license or registration. The department may issue licenses for up to 3 years in duration.

(2) The annual fees for initial licensure, apprentice plumber registration, or renewal of a license and registration issued under this act are as follows:

- (a) If paid after September 30, 2015:
  - (i) Journey plumber..... \$ 20.00.
  - (ii) Apprentice plumber..... \$ 5.00.
- (b) If paid on or before September 30, 2015:
  - (i) Journey plumber..... \$ 40.00.
  - (ii) Apprentice plumber..... \$ 15.00.

(3) A license or apprentice registration that is not renewed within 60 days of expiration may be reinstated only by applying to the board for reinstatement and the payment of the annual renewal fee and the following reinstatement fee:

- (a) If paid after September 30, 2015:
  - (i) Journey plumber..... \$ 25.00.
  - (ii) Apprentice plumber..... \$ 10.00.
- (b) If paid on or before September 30, 2015:
  - (i) Journey plumber..... \$ 50.00.
  - (ii) Apprentice plumber..... \$ 20.00.

(4) An individual who is requesting renewal of a license under subsection (3) within 3 years after the license is expired is not subject to reexamination for the license but is required to pay the reinstatement fee and the annual renewal fee for each year the license was not renewed. An individual who fails to renew a license for more than 3 consecutive years is required to meet the experience and other requirements and take an examination for the class of license requested.

(5) Examination fees under this act are as follows:

- (a) If paid after September 30, 2015:
  - (i) Plumbing contractor..... \$ 50.00.
  - (ii) Master plumber..... \$ 50.00.
  - (iii) Journey plumber..... \$ 50.00.
- (b) If paid on or before September 30, 2015:
  - (i) Plumbing contractor..... \$ 100.00.
  - (ii) Master plumber..... \$ 100.00.
  - (iii) Journey plumber..... \$ 100.00.

(6) The department shall issue an initial master plumber or plumbing contractor license for a period of up to 3 years. A master plumber or plumbing contractor license is renewable for periods of 3 years. If an individual is applying for initial or reinstatement license at a time other than between April 30 and June 30 of the year in which the department issues renewal licenses, the department shall compute and charge the license fee on a yearly prorated basis beginning the year of application until the last year of the 3-year license period.

(7) The initial and renewal fee for a master plumber or plumbing contractor license issued under this act are as follows:

- (a) If paid after September 30, 2015:
  - (i) Plumbing contractor..... \$ 200.00.

- (ii) Master plumber..... \$ 200.00.
- (b) If paid on or before September 30, 2015:
- (i) Plumbing contractor..... \$ 300.00.
- (ii) Master plumber..... \$ 300.00.

(8) A plumbing contractor or master plumber license that is not renewed within 60 days of expiration may be reinstated only by applying to the board and paying the renewal fee and, if paid after September 30, 2015, an \$85.00 reinstatement fee, and \$100.00 if paid on or before September 30, 2015.

(9) The department shall issue an initial or renewal license for a master plumber or a plumbing contractor under this act not later than 90 days after the applicant files a completed application. The date of filing of the application is considered the date the application is received by any agency or department of this state. If the application is considered incomplete by the department, the department shall notify the applicant in writing, or make the information electronically available to the applicant, within 30 days after the date of filing of the incomplete application, describing the deficiency and requesting the additional information. The 90-day period is tolled from the date of notification by the department of a deficiency until the date the requested information is received by the department. The determination of the completeness of an application does not operate as an approval of the application for the license and does not confer eligibility of an applicant determined otherwise ineligible for issuance of a license.

(10) If the department fails to issue or deny a license within the time required under this section, the department shall return the license fee and shall reduce the license fee for the applicant's next renewal application, if any, by 15%. The failure to issue a license within the time required under this section does not allow the department to otherwise delay the processing of the application, and the department shall place that application, when completed, in sequence with other completed applications received at that same time. The department shall not discriminate against an applicant in the processing of the application based on the fact that the license fee was refunded or discounted under this subsection.

(11) The director shall submit a report by December 1 of each year to the standing committees and appropriations subcommittees of the senate and house of representatives concerned with occupational issues. The director shall include all of the following information in the report concerning the preceding fiscal year:

(a) The number of initial and renewal applications the department received and completed within the 90-day time period described in subsection (9).

(b) The number of applications denied by the department.

(c) The number of applicants who were not issued a license within the 90-day time period and the amount of money returned to licensees under subsection (10).

(12) The department shall waive any fee otherwise required under this section or section 35 if the person responsible for paying the fee meets any of the following:

(a) If the person is an individual, he or she is, and provides proof satisfactory to the department that he or she is, an honorably discharged veteran of the armed forces of the United States.

(b) If the person is a nonprofit corporation organized on a membership or directorship basis, a majority of the members or directors, as applicable, are, and the person provides proof satisfactory to the department that a majority of the members or directors are, honorably discharged veterans of the armed forces of the United States.

(c) If the person is not an individual or a nonprofit corporation described in subdivision (b), a majority of the shares or other ownership interests of the person are, and the person provides proof satisfactory to the department that those interests are, held by 1 or more honorably discharged veterans of the armed forces of the United States.

(13) As used in this section, "completed application" means an application that is complete on its face and submitted with any applicable licensing fees and any other information, records, approval, security, or similar item required by law or rule from a local unit of government, a federal agency, or a private entity but not from another department or agency of this state.

**History:** 2002, Act 733, Eff. Mar. 31, 2003;—Am. 2004, Act 268, Imd. Eff. July 23, 2004;—Am. 2008, Act 370, Imd. Eff. Dec. 23, 2008;—Am. 2012, Act 311, Imd. Eff. Oct. 1, 2012.

### **338.3543 License without examination; reciprocity.**

Sec. 33. Upon payment of the required fee in section 31, the board may license without examination applicants licensed under the laws of other states having requirements for licensing plumbers and for regulating plumbing that the board determines are equivalent to the requirements of this state conditional upon that state offering reciprocity.

**History:** 2002, Act 733, Eff. Mar. 31, 2003.

### **338.3545 Lost or destroyed license or registration; fee.**

Sec. 35. If a license or registration is lost or destroyed, the department shall issue a new license or registration, without examination, if a fee of \$20.00 is paid after September 30, 2015, and a fee of \$30.00 is paid on or before September 30, 2015, and an application for a new license or registration is submitted, accompanied by a written statement made by the licensee or registrant that the license or registration was lost or destroyed.

**History:** 2002, Act 733, Eff. Mar. 31, 2003;—Am. 2008, Act 370, Imd. Eff. Dec. 23, 2008;—Am. 2012, Act 311, Imd. Eff. Oct. 1, 2012.

### **338.3547 Disposition of license fees and income.**

Sec. 37. All fees and money received by the department from the licensing of plumbers and any other income the board may receive under this act shall be paid into the state construction code fund as created by section 22 of the Stille-DeRossett-Hale single state construction code act, MCL 125.1522.

**History:** 2002, Act 733, Eff. Mar. 31, 2003.

### **338.3549 Plumbing inspector; prohibited conduct.**

Sec. 39. An individual licensed under this act employed or acting as a plumbing inspector shall not engage in, or be directly or indirectly connected with, the plumbing business including, but not limited to, the furnishing of labor, materials, or appliances for the construction, alteration, or maintenance of a building or the preparation of plans or specifications for the construction, alteration, or maintenance of a building and shall not engage in any work that conflicts with his or her official duties.

**History:** 2002, Act 733, Eff. Mar. 31, 2003.

### **338.3551 Plumbing permits; issuance by state or governmental subdivision.**

Sec. 41. (1) A governmental subdivision may not exempt itself from the licensing requirements of this act and may not engage in or require local licensing.

(2) Except as otherwise provided in subsection (3) and section 15(2), (3), (4), and (5), the state or a governmental subdivision shall issue a plumbing permit only to a licensed plumbing contractor. The state or a governmental subdivision shall require the plumbing contractor to record his or her current plumbing contractor license number on the permit application. A licensed plumbing contractor shall designate 1 or more licensed master plumbers employed full-time who directly supervise the installation of plumbing to obtain permits using the license number of the plumbing contractor. The master plumber's license number must also be recorded on the permit application.

(3) In those instances where business or industrial procedure requires the regular employment of a full-time licensed master plumber, a licensed master plumber shall be authorized to secure permits for installations of plumbing on the premises owned or occupied and used by the business provided the licensed master plumber physically supervises the plumbing work and represents only the business or industrial employer. An annual affidavit furnished by the department shall be signed by both the employer and the licensed master plumber and shall be kept on file in the department. The filing fee for an affidavit shall be determined by the department. A new affidavit must be filed before permits will be issued if the licensed master plumber's employment is terminated. The affidavit shall contain the following:

(a) The name and business address of the person employing the licensed master plumber.

(b) The name, address, and license number of the licensed master plumber.

(c) A statement to the effect that the employer and licensed master plumber will comply with the provisions of the act regulating installation of plumbing in this state.

(4) A plumbing contractor licensed under this act who performs work in a governmental subdivision shall register his or her license with the enforcing agency which issues permits and provides inspection services if required by the enforcing agency. The registration is valid until the expiration date of the plumbing contractor license. Registration shall be granted by all governmental subdivisions in this state to a plumbing contractor licensed under this act upon payment of a fee not to exceed \$15.00.

(5) Master plumbers, journey plumbers, and apprentice plumbers are required to carry their licenses and a photo-identification. Upon the request of an enforcing agency, licensees and apprentice registrants shall present their license or registration and photo-identification.

(6) If the plumbing, reconstruction, alteration, or repair of pipes, tanks, or fixtures is performed without compensation by a person licensed under this act for or on behalf of a charitable organization, the permit required under subsection (2) may be obtained by the owner of the property on which the work is performed. This subsection applies only to the reconstruction, renovation, or remodeling of a 1-family to 4-family dwelling. As used in this subsection, "charitable organization" means a not-for-profit tax-exempt religious,



educational, or humane organization.

**History:** 2002, Act 733, Eff. Mar. 31, 2003.

### **338.3553 Investigations; hearings; board action; grounds; prohibited activity.**

Sec. 43. (1) The department may investigate the activities of a person licensed or registered under this act that are related to the person's licensure or registration as a plumbing contractor, master plumber, journey plumber, or apprentice plumber for activities that include, but are not limited to, the grounds described in subsection (2)(a) through (f). The department may hold hearings pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, and shall report its findings to the board.

(2) After an administrative hearing, the board shall proceed under section 47 against a person if the board finds that 1 or more of the following grounds for board action exist:

(a) The practice of fraud or deceit in obtaining a license or registration under this act.

(b) The practice of fraud or deceit in the performance of work for which a license or registration is required under this act.

(c) An act of gross negligence.

(d) False advertising.

(e) An act that demonstrates incompetence.

(f) A violation of this act or a rule promulgated under this act.

(3) Activity regulated under this act shall not be performed by a person whose license or registration has been suspended or revoked or whose license or registration has expired.

**History:** 2002, Act 733, Eff. Mar. 31, 2003;—Am. 2010, Act 150, Imd. Eff. Aug. 23, 2010.

### **338.3555 Violation of asbestos abatement contractors licensing act.**

Sec. 45. The board shall review the license of a person upon notice by the department that the person has violated the asbestos abatement contractors licensing act, 1986 PA 135, MCL 338.3101 to 338.3319, and may suspend or revoke that person's license for a knowing violation of that act.

**History:** 2002, Act 733, Eff. Mar. 31, 2003.

### **338.3557 Sanctions.**

Sec. 47. (1) After finding the existence of a violation described in section 43 and after an opportunity for a hearing, the board, except as otherwise provided in section 45, shall impose 1 or more of the following sanctions for a violation:

(a) Suspension of the license or registration.

(b) Denial of the license or registration.

(c) Denial of renewal of a license or registration.

(d) Censure.

(e) Probation.

(f) Revocation of the license or registration.

(g) Restitution.

(2) If restitution is required to be made under this section, the license or registration of the person required to make restitution may be suspended until restitution is made.

**History:** 2002, Act 733, Eff. Mar. 31, 2003;—Am. 2010, Act 150, Imd. Eff. Aug. 23, 2010.

### **338.3559 Violation as misdemeanor; penalty.**

Sec. 49. A person licensed or registered under this act who commits a violation of this act, or a person not licensed or registered under this act who is performing any activity regulated by this act and is not exempt from licensure or registration under this act, is guilty of a misdemeanor punishable by a fine of not less than \$1,000.00 per day for each day the violation occurs except that a fine shall not exceed \$5,000.00 in total per violation or punishable by imprisonment for not more than 90 days, or both.

**History:** 2002, Act 733, Eff. Mar. 31, 2003.

### **338.3561 Enforcement action.**

Sec. 51. The attorney general, a local prosecuting attorney, or an attorney representing a governmental subdivision may initiate an action to enforce this act or rules promulgated under this act.

**History:** 2002, Act 733, Eff. Mar. 31, 2003.

### **338.3563 Provision in conflict with Stille-DeRossett-Hale single state construction code act.**

Sec. 53. Any provision of this act which is inconsistent or in conflict with the Stille-DeRossett-Hale single state construction code act is superseded by that act to the extent of the inconsistency.



**History:** 2002, Act 733, Eff. Mar. 31, 2003.

### **338.3565 References to other acts.**

Sec. 55. (1) Any proceedings pending before the plumbing board under the authority of former 1929 PA 266 shall be continued and be conducted and determined in accordance with the former statute.

(2) A person licensed or registered under former 1929 PA 266 on the day immediately preceding the effective date of this act is considered licensed or registered until the expiration of the licensure or registration under that act.

(3) A reference in any other act to former 1929 PA 266 or 1901 PA 222 is considered a reference to this act.

(4) Those rules promulgated under former 1929 PA 266 and 1901 PA 222 remain in effect under this act.

**History:** 2002, Act 733, Eff. Mar. 31, 2003.

### **338.3567 Liability.**

Sec. 57. This act shall not be construed to relieve from or lessen the responsibility or liability of any person owning, operating, controlling, or installing plumbing for damages to persons or property caused by any defect in the plumbing, and the state of Michigan is not to be held as assuming any such liability by reason of the inspection or the examination authorized in that plumbing, the certificate of approval, or the license and certificate issued under this act.

**History:** 2002, Act 733, Eff. Mar. 31, 2003.

### **338.3569 Repeal of MCL 338.901 to 338.917 and 338.951 to 338.965.**

Sec. 59. The following acts are repealed:

(a) 1929 PA 266, MCL 338.901 to 338.917.

(b) 1901 PA 222, MCL 338.951 to 338.965.

**History:** 2002, Act 733, Eff. Mar. 31, 2003.

## MICHIGAN UNARMED COMBAT REGULATORY ACT Act 403 of 2004

AN ACT to regulate certain forms of boxing; to create certain commissions and to provide certain powers and duties for certain state agencies and departments; to license and regulate certain persons engaged in boxing, certain persons connected to the business of boxing, and certain persons conducting certain contests and exhibitions; to confer immunity under certain circumstances; to provide for the conducting of certain tests; to assess certain fees; to create certain funds; to promulgate rules; to provide for penalties and remedies; and to repeal acts and parts of acts.

**History:** 2004, Act 403, Eff. Feb. 20, 2005.

*The People of the State of Michigan enact:*

### **338.3601 Short title.**

Sec. 1. This act shall be known and may be cited as the "Michigan unarmed combat regulatory act".

**History:** 2004, Act 403, Eff. Feb. 20, 2005;—Am. 2007, Act 196, Eff. Mar. 27, 2008.

## CHAPTER 1

### **338.3610 Definitions; A to M.**

Sec. 10. As used in this act:

(a) "Amateur" means a person who is not competing and has never competed for a money prize or who is not competing and has not competed with or against a professional for a prize. For a boxing contest, amateur is a person who is required to be registered by USA boxing.

(b) "Commission" means the Michigan unarmed combat commission created in section 20.

(c) "Complainant" means a person who has filed a complaint with the department alleging that a person has violated this act or a rule promulgated or an order issued under this act. If a complaint is made by the department, the director shall designate 1 or more employees of the department to act as the complainant.

(d) "Department" means the department of labor and economic growth.

(e) "Director" means the director of the department or his or her designee.

(f) "Employee of the department" means an individual employed by the department or a person under contract to the department whose duty it is to enforce the provisions of this act or rules promulgated or orders issued under this act.

(g) "Fund" means the Michigan unarmed combat fund created in section 22.

(h) "Good moral character" means good moral character as determined and defined in 1974 PA 381, MCL 338.41 to 338.47.

(i) "Mixed martial arts" means unarmed combat involving the use of a combination of techniques from different disciplines of the martial arts and includes grappling, kicking, jujitsu, and striking, subject to limitations contained in this act and rules promulgated under this act.

**History:** 2004, Act 403, Eff. Feb. 20, 2005;—Am. 2007, Act 196, Eff. Mar. 27, 2008.

### **338.3611 Definitions; P to S.**

Sec. 11. As used in this act:

(a) "Physician" means that term as defined in section 17001 or 17501 of the public health code, 1978 PA 368, MCL 333.17001 and 333.17501.

(b) "Prize" means something offered or given of present or future value to a participant in a contest, exhibition, or match.

(c) "Professional" means a person who is competing or has competed in boxing or mixed martial arts for a money prize.

(d) "Promoter" means any person who produces or stages any professional contest or exhibition of boxing or mixed martial arts, or both, but does not include the venue where the exhibition or contest is being held unless the venue contracts with the individual promoter to be a co-promoter.

(e) "Purse" means the financial guarantee or any other remuneration for which professionals are participating in a contest or exhibition and includes the professional's share of any payment received for radio, television, or motion picture rights.

(f) "Respondent" means a person against whom a complaint has been filed who may be a person who is or is required to be licensed under this act.

(g) "Rule" means a rule promulgated under the administrative procedures act of 1969, 1969 PA 306, MCL

24.201 to 24.328.

(h) "School", "college", or "university" does not include an institution formed or operated principally to provide instruction in boxing and other sports.

**History:** 2004, Act 403, Eff. Feb. 20, 2005;—Am. 2005, Act 49, Imd. Eff. June 23, 2005;—Am. 2007, Act 196, Eff. Mar. 27, 2008.

### **338.3612 Applicability of act; exceptions.**

Sec. 12. This act does not apply to any of the following:

(a) Professional or amateur wrestling.

(b) Amateur martial arts sports or activities.

(c) Contests or exhibitions conducted by or participated in exclusively by an agency of the United States government or by a school, college, or university or an organization composed exclusively of those entities if each participant is an amateur.

(d) Amateur boxing regulated by the amateur sports act of 1978, 36 USC 371.

(e) Boxing elimination contests regulated by section 50.

(f) Amateur mixed martial arts.

**History:** 2004, Act 403, Eff. Feb. 20, 2005;—Am. 2007, Act 196, Eff. Mar. 27, 2008.

## **CHAPTER 2**

### **338.3620 Michigan unarmed combat commission; creation; appointment; qualifications; terms; quorum; promotion or sponsorship of contest or exhibition; meetings; disclosure of records; public meetings.**

Sec. 20. (1) The Michigan unarmed combat commission, consisting of 11 voting members, appointed by the governor with the advice and consent of the senate, is created within the department. The director is appointed as a nonvoting ex officio member of the commission. A majority of the members appointed by the governor shall be licensees under this act. Four of the members shall be licensees in boxing, and 4 members shall be licensees in mixed martial arts. Three members shall be members of the general public. Budgeting, procurement, human resources, information technology, and related management functions of the commission shall be performed by the department.

(2) Except as otherwise provided in this subsection, the 11 members appointed by the governor shall serve a term of 4 years. Of the initial members appointed under this act, the terms of 2 of the members shall be 4 years, the term of 2 of the members shall be 2 years, and the term of 3 of the members shall be 1 year. When so designated by the director, any board action taken on only a boxing or mixed martial arts matter shall only be considered by the appropriately licensed members and members of the general public. The terms of members appointed by the governor are subject to the pleasure of the governor.

(3) Five members of the commission constitute a quorum for the exercise of the authority conferred upon the commission except that after all of the additional members appointed as a result of the 2007 amendatory act that added this clause, the quorum shall consist of 7 members. Subject to subsection (2), a concurrence of at least 4 of the members, or a concurrence of a majority of those members who have not participated in an investigation or administrative hearing regarding a matter before the commission, is necessary to render a decision by the commission. In the case of proposed board action to be taken on a matter involving only boxing or only mixed martial arts and where only the members of the board designated for the particular sport are eligible to confer, the quorum shall be 4 members, 2 of whom shall be licensed under the appropriate sport. Under those circumstances, a concurrence of 3 members is necessary to render a decision by the commission.

(4) A member of the commission shall not at any time during his or her service as a member promote or sponsor any contest or exhibition of boxing, or combination of those events, or have any financial interest in the promotion or sponsorship of those contests or exhibitions. The commission shall meet not less than 4 times per year, and upon request and at the discretion of the chair, the department shall schedule additional interim meetings.

(5) Except as otherwise provided in section 33(9), the records of the commission are subject to disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(6) Meetings of the commission are subject to the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

**History:** 2004, Act 403, Eff. Feb. 20, 2005;—Am. 2007, Act 196, Eff. Mar. 27, 2008.

### **338.3621 Person with financial interest ineligible for appointment.**

Sec. 21. A person who has a material financial interest in any club, organization, or corporation, the main

object of which is the holding or giving of boxing or mixed martial arts contests or exhibitions is not eligible for appointment to the commission.

**History:** 2004, Act 403, Eff. Feb. 20, 2005;—Am. 2007, Act 196, Eff. Mar. 27, 2008.

**338.3622 Chairperson; seal; rules; unarmed combat fund; creation; use; carrying forward remaining money; compensation of members; affiliation with other commissions or athletic authorities; duties of commission and department; incorporation by reference of certain standards.**

Sec. 22. (1) The commission shall elect 1 of its members as the chair of the commission. The commission may purchase and use a seal. The director may promulgate rules for the administration of this act but only after first consulting with the commission. The commission may request the department to promulgate a rule under section 38 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.238. Notwithstanding the time limit provided for in section 38 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.238, the department shall respond in writing to any request for rule promulgating by the commission within 30 calendar days after a request. The response shall include a reason and explanation for acceptance or denial of the request.

(2) The department shall promulgate rules to include all of the following:

(a) Number and qualifications of ring officials required at any exhibition or contest.

(b) Powers, duties, and compensation of ring officials.

(c) Qualifications of licensees.

(d) License fees not otherwise provided under this act.

(e) Any necessary standards designed to accommodate federally imposed mandates that do not directly conflict with this act.

(f) A list of enhancers and prohibited substances, the presence of which in a contestant is grounds for suspension or revocation of the license or other sanctions.

(3) An unarmed combat fund is created as a revolving fund in the state treasury and administered by the director. The money in the fund is to be only used for the costs of administration and enforcement of this act and for any costs associated with the administration of this act, including, but not limited to, reimbursing the department of attorney general for the reasonable costs of services provided to the department under this act. Money remaining in the fund at the end of the fiscal year and interest earned shall be carried forward into the next fiscal year and shall not revert to the general fund. The department shall deposit into the fund all money received from the regulatory and enforcement fee, license fees, event fees, and administrative fines imposed under this act, and from any other source.

(4) Annually, the legislature shall fix the per diem compensation of the members of the commission. Travel or other expenses incurred by a commission member in the performance of an official function shall be payable by the department under the standardized travel regulations of the department of management and budget.

(5) The commission may affiliate with any other state or national boxing or mixed martial arts commission or athletic authority. The commission, upon approval of the director, may enter into any appropriate reciprocity agreements.

(6) The commission and department are vested with management, control, and jurisdiction over all professional boxing and professional mixed martial arts contests or exhibitions to be conducted, held, or given within the state of Michigan. Except for any contests or exhibitions exempt from this act, a contest or exhibition shall not be conducted, held, or given within this state except in compliance with this act.

(7) The requirements and standards contained in standards adopted by the New Jersey state athletic control board, N.J.A.C. 13:46-24A and 24B, as they may exist on February 20, 2005, entitled the mixed martial arts unified rules, dated 2000, except for the license fees described in those rules, are incorporated by reference. Any requirements and standards incorporated by reference in this subsection that are in conflict with the requirements and standards of this act are considered superseded by the provisions of this act. The director, in consultation with the commission, may promulgate rules consistent with section 35 to alter, supplement, update, or amend the standards incorporated by reference under this subsection. Any references to the commission in the mixed martial arts unified rules shall mean the department. The standards contained in 13:46-24B.3 are not incorporated by reference.

**History:** 2004, Act 403, Eff. Feb. 20, 2005;—Am. 2007, Act 196, Eff. Mar. 27, 2008;—Am. 2010, Act 100, Imd. Eff. June 22, 2010.

## CHAPTER 3

**338.3630 License required; violation as misdemeanor; penalty; injunction; enforcement;**

**remedies.**

Sec. 30. (1) A person shall not engage in or attempt to engage in an activity regulated under this act unless the person possesses a license issued by the department or unless the person is exempt from licensure under this act.

(2) A person who violates subsection (1) is guilty of a misdemeanor punishable by a fine of not more than \$500.00 or imprisonment for not more than 90 days, or both.

(3) A person who violates subsection (1) a second or any subsequent time is guilty of a misdemeanor punishable by a fine of not more than \$1,000.00 or imprisonment for not more than 1 year, or both.

(4) Notwithstanding the existence and pursuit of any other remedy, an affected person may maintain injunctive action in a court of competent jurisdiction to restrain or prevent a person from violating subsection (1). If successful in obtaining injunctive relief, the affected person shall be entitled to actual costs and attorney fees. As used in this subsection, "affected person" means a person directly affected by the actions of a person suspected of violating subsection (1) and includes, but is not limited to, the commission, the department, or a member of the general public.

(5) An investigation may be conducted by the department to enforce this section. A person who violates this section is subject to the strictures prescribed in this section and section 43.

(6) The remedies under this section are independent and cumulative. The use of 1 remedy by a person shall not bar the use of other lawful remedies by that person or the use of a lawful remedy by another person.

**History:** 2004, Act 403, Eff. Feb. 20, 2005.

**338.3631 Application for licensure.**

Sec. 31. By filing an application for a license, an applicant does both of the following:

(a) Certifies his or her general suitability, character, integrity, and ability to participate, engage in, or be associated with boxing or mixed martial arts contests or exhibitions. The burden of proof is on the applicant to establish to the satisfaction of the commission and the department that the applicant is qualified to receive a license.

(b) Accepts the risk of adverse public notice, embarrassment, criticism, financial loss, or other action with respect to his or her application and expressly waives any claim for damages as a result of any adverse public notice, embarrassment, criticism, financial loss, or other action. Any written or oral statement made by any member of the commission or any witness testifying under oath that is relevant to the application and investigation of the applicant is immune from civil liability for libel, slander, or any other tort.

**History:** 2004, Act 403, Eff. Feb. 20, 2005;—Am. 2005, Act 49, Imd. Eff. June 23, 2005;—Am. 2007, Act 196, Eff. Mar. 27, 2008.

**338.3632 Promoter's license required.**

Sec. 32. A contest or exhibition regulated by this act and not exempt from this act shall be held or conducted in this state only under a promoter's license issued by the department as provided for in section 33.

**History:** 2004, Act 403, Eff. Feb. 20, 2005;—Am. 2007, Act 196, Eff. Mar. 27, 2008.

**338.3633 Promoter's license; application; good moral character; bond; fees; submission of contract; deposit of money; disclosure of contract; drug test results.**

Sec. 33. (1) An application for a promoter's license must be in writing and correctly show and define the applicant.

(2) An applicant for a promoter's license must demonstrate good moral character. If an applicant for a promoter's license is denied a license due to lack of good moral character, the applicant may petition the commission for a review of the decision under section 46.

(3) Before an approval for a contest or exhibition is granted, a promoter must file a bond with the department in an amount fixed by the department but not less than \$20,000.00, which bond shall be executed by the applicant as principal and by a corporation qualified under the laws of this state as surety, payable to the state of Michigan, and conditioned upon the faithful performance by the applicant of the provisions of this act. The department shall annually adjust the amount of the bond based upon the Detroit consumer price index. The bond must be purchased not less than 5 days before the contest or exhibition and may be used to satisfy payment for the professionals, costs to the department for ring officials and physicians, and drug tests.

(4) A promoter must apply for and obtain an annual license from the department in order to present a program of contests or exhibitions regulated by this act. The annual license fee is \$250.00. The department shall request, and the applicant shall provide, such information as it determines necessary to ascertain the financial stability of the applicant.

(5) A boxing promoter shall pay an event fee of \$125.00. A mixed martial arts promoter shall pay an event fee of \$2,000.00.

(6) There is imposed a regulatory and enforcement fee upon the promoter to assure the integrity of the sports of boxing and mixed martial arts, the public interest, and the welfare and safety of the professionals in the amount of 3% of the total gross receipts from the sale, lease, or other exploitation of broadcasting, television, and motion picture rights, but not to exceed \$25,000.00 per contract, for boxing or mixed martial arts events to which the following apply:

(a) If the event is a boxing event, the event is located in a venue with a seating capacity of over 5,000.

(b) The promoter proposes to televise or broadcast the event over any medium for viewing by spectators not present in the venue.

(c) The event is designed to promote professional boxing or mixed martial arts contests in this state.

(7) At least 10 days before the boxing or mixed martial arts event, the promoter shall submit the contract subject to the regulatory and enforcement fee to the department, stating the amount of the probable total gross receipts from the sale, lease, or other exploitation of broadcasting, television, and motion picture rights.

(8) The money derived from the regulatory and enforcement fee shall be deposited into the fund created in section 22 and used for the purposes described in that section.

(9) A promoter shall, within 5 business days before a boxing or mixed martial arts contest or exhibition, convey to the department an executed copy of the contract relative to that contest or exhibition. The copy of the contract is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, except that the department may disclose statistical information on the number, types, and amounts of contracts so long as information regarding identifiable individuals or categories is not revealed.

(10) Beginning June 23, 2005, a promoter's license is subject to revocation unless at least 10% of the purse in a contest or exhibition, but not more than \$10,000.00 per contestant, is withheld or escrowed until such time as the results of the postcontest drug test, as required by this act, are available to the department. If the drug test results confirm or demonstrate compliance with this act, the department shall issue an order allowing the promoter to forward to the professional the amount withheld or escrowed. If the results do not confirm or demonstrate compliance with this act, the department shall serve a formal complaint on the professional under section 44(2), and the department shall issue an order to the promoter requiring the promoter to forward the amount withheld or escrowed to the department. Upon receipt, the department shall deposit the money into the fund. If after a hearing the professional is found in violation of the act, the professional shall forfeit the amount withheld from the purse and the professional is subject to the penalties prescribed in section 48. However, if the formal complaint is dismissed or any final order issued as the result of the complaint is overturned, the department shall issue a refund to the professional for the amount withheld.

(11) Subsection (10) does not prohibit a licensed promoter from including a provision in a contract with a professional that requires the promoter to withhold 10% of the purse in a contest or exhibition until such time as the postcontest drug test results are available to the department.

**History:** 2004, Act 403, Eff. Feb. 20, 2005;—Am. 2005, Act 49, Imd. Eff. June 23, 2005;—Am. 2007, Act 196, Eff. Mar. 27, 2008.

### **338.3634 Rules; determination of applicant's financial stability; presence of applicant at commission meeting.**

Sec. 34. (1) The director, in consultation with the commission, may promulgate rules for the application and approval process for promoters. Until the rules are promulgated, the applicant shall comply with the standards described in subsection (2).

(2) The rules regarding the application process shall include at least the following:

(a) An initial application processing fee sufficient to cover the costs of processing a boxing or mixed martial arts promoter's license, but not less than \$250.00.

(b) A requirement that background information be disclosed by the applicant who is an individual or by the principal officers or members and individuals having at least a 10% ownership interest in the case of any other legal entity, with emphasis on the applicant's business experience.

(c) Information from the applicant concerning past and present civil lawsuits, judgments, and filings under the bankruptcy code that are not more than 7 years old.

(d) Any other relevant and material information considered necessary by the director upon consultation with the commission.

(3) The department may consult with the commission on issues related to the determination of an applicant's financial stability and shall refer the application to the commission if clear and convincing grounds for approval of the financial stability aspect of the application do not exist.

(4) As part of the approval process for promoters, the commission may require the applicant or his or her representative to be present at a commission meeting in which the application is considered.

**History:** 2004, Act 403, Eff. Feb. 20, 2005;—Am. 2005, Act 49, Imd. Eff. June 23, 2005;—Am. 2007, Act 196, Eff. Mar. 27, 2008.



### **338.3635 Rules; fees.**

Sec. 35. The director, in consultation with the commission, shall promulgate rules to set standards for boxing and mixed martial arts exhibitions and participants and to provide for license fees for all participants in the activities regulated by this act not otherwise provided for in this act, including, but not limited to, license fees for a physician, physician's assistant, nurse practitioner, referee, judge, matchmaker, timekeeper, professional, contestant, or manager or a second of those persons.

**History:** 2004, Act 403, Eff. Feb. 20, 2005;—Am. 2007, Act 196, Eff. Mar. 27, 2008.

## **CHAPTER 4**

### **338.3640 Complaint; filing.**

Sec. 40. A complaint which alleges that a person has violated this act or a rule promulgated or an order issued under this act shall be lodged with the department. The department of attorney general, the department, the commission, or any other person may file a complaint.

**History:** 2004, Act 403, Eff. Feb. 20, 2005.

### **338.3641 Complaint; investigation; procedures.**

Sec. 41. (1) The department, upon receipt of a complaint, immediately shall begin its investigation of the allegations of the complaint and shall open a correspondence file. The department shall make a written acknowledgment of the complaint within 15 days after receipt of the complaint to the person making the complaint. If the complaint is made by the department, the director shall designate 1 or more employees of the department to act as the person making the complaint.

(2) The department shall conduct the investigation required under subsection (1). In furtherance of that investigation, the department may request that the attorney general petition a court of competent jurisdiction to issue a subpoena requiring a person to appear before the department and be examined with reference to a matter within the scope of the investigation and to produce books, papers, or documents pertaining to the investigation.

(3) The investigative unit of the department, within 30 days after the department receives the complaint, shall report to the director on the status of the investigation. If, for good cause shown, an investigation cannot be completed within 30 days, the director may extend the time in which a report may be filed.

(4) If the report of the investigative unit of the department does not disclose a violation of this act or a rule promulgated or an order issued under this act, the complaint shall be closed by the department. The reasons for closing the complaint shall be forwarded to the respondent and complainant, who then may provide additional information to reopen the complaint.

(5) If the report of the investigative unit made pursuant to subsection (3) discloses evidence of a violation of this act or a rule promulgated or an order issued under this act, the department or the department of attorney general shall prepare the appropriate action against the respondent which may be any of the following:

(a) A formal complaint.

(b) A cease and desist order.

(c) A notice of summary suspension subject to sections 42 and 48(7).

(6) At any time during its investigation or after the issuance of a formal complaint, the department may bring together the complainant and the respondent for an informal conference. At the informal conference, the department shall attempt to resolve issues raised in the complaint and may attempt to aid the parties in reaching a formal settlement or stipulation.

**History:** 2004, Act 403, Eff. Feb. 20, 2005.

### **338.3642 Summary suspension.**

Sec. 42. (1) After an investigation has been conducted, the department may issue an order summarily suspending a license based on an affidavit by a person familiar with the facts set forth in the affidavit, or, if appropriate, based upon an affidavit on information and belief, that an imminent threat to the integrity of the sport, the public interest, and the welfare and safety of a professional exists. Thereafter, the proceedings described in this chapter shall be promptly commenced and decided.

(2) A person whose license has been summarily suspended under this section may petition the department to dissolve the order. Upon receiving a petition, the department immediately shall schedule a hearing to decide whether to grant or deny the requested relief.

(3) An administrative law hearings examiner shall grant the requested relief dissolving the summary suspension order, unless sufficient evidence is presented that an imminent threat to the integrity of the sport,

the public interest, and the welfare and safety of a professional exists that requires emergency action and continuation of the department's summary suspension order.

(4) The record created at the hearing to dissolve a summary suspension order shall become part of the record on the complaint at a subsequent hearing in a contested case.

(5) A summary suspension of a professional for refusal or failure to submit to a drug test or for the presence of controlled substances, enhancers, prohibited drugs, or other prohibited substances, as described in section 48(7), shall proceed under this section.

**History:** 2004, Act 403, Eff. Feb. 20, 2005.

**Compiler's note:** In subsection (5), the reference to "section 48(7)" evidently should read "section 48(6)."

### **338.3643 Cease and desist order.**

Sec. 43. (1) After an investigation has been conducted, the director may order a person to cease and desist from a violation of this act or a rule promulgated or an order issued under this act.

(2) A person ordered to cease and desist may request a hearing before the department if a written request for a hearing is filed within 30 days after the effective date of the order.

(3) Upon a violation of a cease and desist order issued under this act, the department of attorney general may apply to a court of competent jurisdiction to restrain and enjoin, temporarily or permanently, or both, a person from further violating a cease and desist order.

**History:** 2004, Act 403, Eff. Feb. 20, 2005.

### **338.3644 Formal complaint.**

Sec. 44. (1) A summary suspension order, cease and desist order, or injunctive relief issued or granted in relation to a license is in addition to and not in place of an informal conference; criminal prosecution; or proceeding to deny, revoke, or suspend a license; or any other action authorized by this act.

(2) After an investigation has been conducted and a formal complaint prepared, the department shall serve the formal complaint upon the respondent and the complainant. At the same time, the department shall serve the respondent with a notice describing the compliance conference and hearing process and offering the respondent a choice of 1 of the following opportunities:

(a) An opportunity to meet with the department to negotiate a settlement of the matter.

(b) If the respondent is a licensee or registrant under this act, an opportunity to demonstrate compliance prior to holding a contested case hearing.

(c) An opportunity to proceed to a contested case hearing.

(3) A respondent upon whom service of a formal complaint has been made pursuant to this section may select, within 15 days after the receipt of notice, 1 of the options described in subsection (2). If a respondent does not select 1 of those options within the time period described in this section, then the department shall proceed to a contested case hearing as described in subsection (2)(c).

(4) An informal conference may be attended by a member of the commission, at the discretion of that commission, and may result in a settlement, consent order, waiver, default, or other method of settlement agreed upon by the parties and the department. A settlement may include the revocation or suspension of a license; censure; probation; restitution; or a penalty provided for in section 48. The commission may reject a settlement and require a contested case hearing.

(5) An employee of the department may represent the department in any contested case hearing.

(6) This chapter does not prevent a person against whom a complaint has been filed from showing compliance with this act or a rule promulgated or an order promulgated or issued under this act.

(7) If an informal conference is not held or does not result in a settlement of a complaint, the department shall allow the respondent an administrative hearing. A hearing under this section may be attended by a member of the commission.

(8) The department or the department of the attorney general may petition a court of competent jurisdiction to issue a subpoena which shall require the person subpoenaed to appear or testify or produce relevant documentary material for examination at a proceeding.

**History:** 2004, Act 403, Eff. Feb. 20, 2005.

### **338.3645 Hearing report.**

Sec. 45. (1) At the conclusion of a hearing conducted under section 44(7), the administrative law hearings examiner shall submit a determination of findings of fact and conclusions of law to the department and the department of the attorney general and the commission, in a hearing report. The submitted hearing report may recommend the penalties to be assessed as prescribed in section 48.

(2) A copy of a hearing report shall be submitted to the person who made the complaint and to the person

against whom the complaint was lodged.

(3) Within 60 days after receipt of an administrative law hearings examiner's hearing report, the commission shall meet and make a determination of the penalties to be assessed under section 48. The commission's determination shall be made on the basis of the administrative law hearings examiner's report. A transcript of a hearing or a portion of the transcript shall be made available to the commission upon request. If a transcript or a portion of the transcript is requested, the commission's determination of the penalty or penalties to be assessed under section 48 shall be made at a meeting within 60 days after receipt of a transcript or portion of the transcript.

(4) If the commission does not determine the appropriate penalty or penalties to be assessed within the time limits prescribed by subsection (3), the director may determine the appropriate penalty and issue a final order.

(5) A member of the commission who has participated in an investigation or administrative hearing on a complaint filed with the department or who has attended an informal conference shall not participate in making a final determination in a proceeding on that complaint.

**History:** 2004, Act 403, Eff. Feb. 20, 2005.

### **338.3646 Issuance of license or renewal; petition to review.**

Sec. 46. (1) A person seeking a license or renewal under this act may petition the department and the commission for a review if that person does not receive a license or renewal.

(2) A petition submitted under subsection (1) shall be in writing and shall set forth the reasons the petitioner feels the licensure or renewal should be issued.

(3) In considering a petition submitted under subsection (1), the department and the commission may administer an alternative form of testing to the petitioner or conduct a personal interview with the petitioner, or both.

(4) The department may issue a license or renewal if, based on a review of the qualifications of the person who submitted a petition under subsection (1), the department and the commission determine that the person could perform the licensed activity with competence.

(5) Notwithstanding any other provision of this act, if a written grievance was lodged before the effective date of this act against a person licensed under an act repealed by this act, the proceedings on that grievance shall be conducted in the manner prescribed in the repealed act.

**History:** 2004, Act 403, Eff. Feb. 20, 2005.

### **338.3647 Action against license; rules; seat; final decision-making authority.**

Sec. 47. (1) The department shall initiate an action under this chapter against an applicant or take any other allowable action against the license of any contestant, promoter, or other participant who the department determines has done any of the following:

(a) Enters into a contract for a contest or exhibition in bad faith.

(b) Participates in any sham or fake contest or exhibition.

(c) Participates in a contest or exhibition pursuant to a collusive understanding or agreement in which the contestant competes or terminates the contest or exhibition in a manner that is not based upon honest competition or the honest exhibition of the skill of the contestant.

(d) Is determined to have failed to give his or her best efforts, failed to compete honestly, or failed to give an honest exhibition of his or her skills in a contest or exhibition.

(e) Is determined to have performed an act or engaged in conduct that is detrimental to a contest or exhibition, including, but not limited to, any foul or unsportsmanlike conduct in connection with a contest or exhibition.

(f) Gambles on the outcome of a contest or exhibition in which he or she is a contestant, promoter, matchmaker, ring official, or second.

(g) Assaults another licensee, commission member, or department employee while not involved in or while outside the normal course of a contest or exhibition.

(h) Practices fraud or deceit in obtaining a license.

(2) The department, in consultation with the commission, shall promulgate rules to provide for both of the following:

(a) The timing of drug tests for contestants.

(b) Specific summary suspension procedures for contestants and participants who test positive for drugs or fail to submit to a drug test, under section 48(4). The rules shall include the following:

(i) A procedure to allow the department to place the licensee upon the national suspension list.

(ii) An expedited appeal process for the summary suspension.

(iii) A relicensing procedure following summary suspension.

(3) An employee of the department must be present at all weigh-ins, medical examinations, contests, exhibitions, and matches to ensure that this act and rules are strictly enforced.

(4) Each promoter shall furnish each member of the commission present at a contest or exhibition a seat in the area immediately adjacent to the contest or exhibition. An additional seat shall be provided in the venue.

(5) The commission chair, a commission member assigned by the chair, or a department official designated by the commission chair shall have final authority involving any conflict at a contest, exhibition, or match and shall advise the chief inspector in charge accordingly. In the absence of the chair, an assigned member, or a department official designated by the commission chair, the chief inspector in charge shall be the final decision-making authority.

**History:** 2004, Act 403, Eff. Feb. 20, 2005;—Am. 2005, Act 49, Imd. Eff. June 23, 2005;—Am. 2007, Act 196, Eff. Mar. 27, 2008.

### **338.3648 Reinstatement; fine; penalties; grounds for summary suspension.**

Sec. 48. (1) Upon receipt of an application for reinstatement and the payment of an administrative fine prescribed by the commission, the commission may reinstate a revoked license or lift a suspension. If disciplinary action is taken against a person under this act that does not relate to a contest or exhibition, the commission may, in lieu of suspending or revoking a license, prescribe an administrative fine not to exceed \$10,000.00. If disciplinary action is taken against a person under this act that relates to the preparation for a contest or an exhibition, the occurrence of a contest or an exhibition, or any other action taken in conjunction with a contest or an exhibition, the commission may prescribe an administrative fine in an amount not to exceed 100% of the share of the purse to which the holder of the license is entitled for the contest or exhibition or an administrative fine not to exceed \$100,000.00 in the case of any other person. This administrative fine may be imposed in addition to, or in lieu of, any other disciplinary action that is taken against the person by the commission.

(2) If an administrative fine is imposed under this section, the commission may recover the costs of the proceeding, including investigative costs and attorney fees. The department or the attorney general may bring an action in a court of competent jurisdiction to recover any administrative fines, investigative and other allowable costs, and attorney fees. The filing of an action to recover fines and costs does not bar the imposition of other sanctions under this act.

(3) An employee of the department, in consultation with any commission member present, may issue an order to withhold the purse for 3 business days due to a violation of this act or a rule promulgated under this act. During that 72-hour time period, the commission may convene a special meeting to determine if the action of the employee of the department was warranted. If the commission determines that the action was warranted, the department shall offer to hold an administrative hearing as soon as practicable but within at least 7 calendar days.

(4) A professional or participant in a professional contest or exhibition shall submit to a postexhibition test of body fluids to determine the presence of controlled substances, prohibited substances, or enhancers. The department shall promulgate rules to set requirements regarding preexhibition tests of body fluids to determine the presence of controlled substances, prohibited substances, or enhancers.

(5) The promoter is responsible for the cost of the testing performed under this section.

(6) Either of the following is grounds for summary suspension of the individual's license in the manner provided for in section 42:

(a) A test resulting in a finding of the presence of controlled substances, enhancers, or other prohibited substances as determined by rule of the commission.

(b) The refusal or failure of a contestant to submit to the drug testing ordered by an authorized person.

**History:** 2004, Act 403, Eff. Feb. 20, 2005;—Am. 2005, Act 49, Imd. Eff. June 23, 2005;—Am. 2007, Act 196, Eff. Mar. 27, 2008.

## **CHAPTER 5**

### **338.3650 Boxing elimination contests.**

Sec. 50. (1) Boxing elimination contests in which all of the following apply are exempt from this act:

(a) The contestants compete for prizes only in elimination contests and are not also professional boxers competing in 4 or more rounds of nonelimination boxing.

(b) Each bout is scheduled to consist of 3 or fewer 1-minute rounds, with contests conducted on no more than 2 consecutive calendar days.

(c) Competing contestants are prohibited from boxing for more than 12 minutes on each contest day.

(d) The contestants participating in the elimination contest are insured by the promoter for all medical and hospital expenses to be paid to the contestants to cover injuries sustained in the contest.

(e) A physician is in attendance at ringside and the physician has authority to stop the contest for medical reasons.

(f) All contestants pass a physical examination given by a physician, a licensed physician's assistant, or a certified nurse practitioner before the contest.

(g) A preliminary breath test is administered to each contestant which indicates a blood alcohol content of .02% or less.

(h) The promoter conducts the elimination contest in compliance with the following:

(i) A contestant who has lost by a technical knockout is not permitted to compete again for a period of 30 calendar days or until the contestant has submitted to the promoter the results of a physical examination equivalent to that required of professional boxers.

(ii) The ringside physician examines a contestant who has been knocked out in an elimination contest or whose fight has been stopped by the referee because he or she received hard blows to the head that made him or her defenseless or incapable of continuing immediately after the knockout or stoppage. The ringside physician may recommend post-fight neurological examinations, which may include computerized axial tomography (CAT) scans or magnetic resonance imaging (MRI), to be performed on the contestant immediately after the contestant leaves the location of the contest. The promoter shall not permit the contestant to compete until a physician has certified that the contestant is fit to compete. If the physician recommended further neurological examinations, the promoter shall not permit the contestant to compete until the promoter receives copies of examination reports demonstrating that the contestant is fit to compete.

(iii) The promoter requires that a contestant who has sustained a severe injury or knockout in an elimination contest be examined by a physician. The promoter shall not permit the contestant to compete until the physician has certified that the contestant has fully recovered.

(iv) The promoter does not permit a contestant to compete in an elimination contest for a period of not less than 60 days if he or she has been knocked out or has received excessive hard blows to the head that required the fight to be stopped.

(v) A contestant who has been knocked out twice in a period of 3 months or who has had excessive head blows causing a fight to be stopped is not permitted by a promoter to participate in an elimination contest for a period of not less than 120 days from the second knockout or stoppage.

(vi) A contestant who has been knocked out or had excessive hard blows to the head causing a fight to be stopped 3 times consecutively in a period of 12 months is not permitted by a promoter to participate in an elimination contest for a period of 1 year from the third knockout.

(vii) Before resuming competition after any of the periods of rest prescribed in subparagraphs (iv), (v), and (vi), a promoter requires the contestant to produce a certification by a physician stating that the contestant is fit to take part in an elimination contest.

(2) As part of the physical examination given before the boxing elimination contest, the physician, licensed physician's assistant, certified nurse practitioner, or other trained person shall administer a preliminary breath test in compliance with standards imposed in rules promulgated by the department of state police regarding equipment calibration and methods of administration. The promoter shall keep a log of preliminary breath test results of contestants on file at its place of business for at least 3 years after the date of administration of the test. These results shall be made available to law enforcement officials upon request.

**History:** 2004, Act 403, Eff. Feb. 20, 2005.

### **338.3651 Participant license.**

Sec. 51. (1) A physician, licensed physician's assistant, certified nurse practitioner, referee, judge, matchmaker, timekeeper, professional boxer, contestant, or manager, or a second of those persons, shall obtain a participant license from the department before participating either directly or indirectly in a contest or exhibition.

(2) An application for a participant license shall be in writing, shall be verified by the applicant, and shall set forth those facts requested by and conform to the rules promulgated by the department.

(3) The department shall issue a passport with each professional contestant's license.

(4) The commission, or a member of the commission, has standing to contest the issuance or nonissuance of an exhibition or other license by written or electronic communication to the department.

**History:** 2004, Act 403, Eff. Feb. 20, 2005;—Am. 2007, Act 196, Eff. Mar. 27, 2008.

### **338.3652 Examination or training program.**

Sec. 52. (1) A person seeking a license under this act as a judge or referee may be required to satisfactorily pass an examination or training program acceptable to the department.

(2) A person seeking a license under this act as a judge, referee, or contestant shall pass a physical



examination that is performed by a licensed physician, a licensed physician's assistant, or a certified nurse practitioner acceptable to the department and the commission.

(3) Until the expiration of 1 year after the effective date of this act, the department shall issue an equivalent license without an examination to a person who is licensed in any capacity under former article 8 of the occupational code, 1980 PA 299, on the effective date of this act upon application on a form provided by the department.

**History:** 2004, Act 403, Eff. Feb. 20, 2005.

### **338.3653 Licensure as professional referee, judge, or timekeeper.**

Sec. 53. (1) In addition to the requirements of section 52, a person seeking a license as a professional referee, judge, or timekeeper shall referee, judge, or keep time for a minimum of 300 rounds of amateur competitive boxing. To the extent standards are not contained in the mixed martial arts unified rules incorporated by reference under section 22(7), the department shall promulgate rules establishing standards for a person seeking licensure as a mixed martial arts professional referee, judge, or timekeeper.

(2) After a person has successfully completed the requirements of section 51(2) and subsection (1), the department may issue the person a license.

**History:** 2004, Act 403, Eff. Feb. 20, 2005;—Am. 2007, Act 196, Eff. Mar. 27, 2008.

### **338.3654 Unofficial scoring; rules; completion of standardized evaluation sheet by licensee.**

Sec. 54. (1) In addition to the requirements of section 53, a person seeking a license as a professional judge shall score, unofficially, not fewer than 200 rounds of professional boxing. In order to fulfill the requirements of this subsection, an applicant shall only unofficially judge contests that are approved by the commission for that purpose. An applicant shall not receive compensation for judging boxing contests or exhibitions under this subsection. Scorecards shall be transmitted to the department and the commission for review and evaluation.

(2) To the extent standards are not contained in the mixed martial arts unified rules incorporated by reference under section 22(7), the department shall promulgate rules establishing experience standards for a person seeking licensure as a mixed martial arts professional judge.

(3) An employee authorized by the department or the commission shall complete a standardized evaluation sheet for each contest or exhibition judged by a licensee. The commission shall annually review the evaluation sheets. A commission member attending a contest or exhibition may also submit to the department a standardized evaluation sheet.

**History:** 2004, Act 403, Eff. Feb. 20, 2005;—Am. 2005, Act 49, Imd. Eff. June 23, 2005;—Am. 2007, Act 196, Eff. Mar. 27, 2008.

### **338.3655 Medical or hospital insurance.**

Sec. 55. (1) A professional participating in a contest or exhibition shall be insured by the promoter for not less than \$50,000.00 for medical and hospital expenses to be paid to the contestant to cover injuries sustained in the contest and for not less than \$50,000.00 to be paid in accordance with the statutes of descent and distribution of personal property if the contestant should die as a result of injuries received in a boxing contest or exhibition.

(2) A promoter shall pay the policy premium and deductible regarding any medical or hospital expenses for a contestant's injuries.

**History:** 2004, Act 403, Eff. Feb. 20, 2005;—Am. 2007, Act 196, Eff. Mar. 27, 2008.

### **338.3656 Number of rounds; weight of contest gloves; certification of physical condition.**

Sec. 56. (1) A professional boxing contest or exhibition shall be of not more than 10 rounds in length, except a boxing contest or exhibition which involves a national or international championship may last not more than 12 rounds in the determination of the department. The contestants shall wear during a contest gloves weighing at least 8 ounces each. Rounds shall be not longer than 3 minutes, with not less than 1-minute rest between rounds.

(2) A professional or participant in a contest or exhibition shall be certified to be in proper physical condition by a licensed physician, a licensed physician's assistant, or a certified nurse practitioner before participating in a contest or exhibition. The department shall designate any medical test that may be required to determine if the individual is in proper physical condition.

**History:** 2004, Act 403, Eff. Feb. 20, 2005;—Am. 2007, Act 196, Eff. Mar. 27, 2008.

### **338.3657 Duties of physician.**

Sec. 57. (1) A licensed physician shall be in attendance at each contest or exhibition. The physician shall



observe the physical condition of the contestants and advise the referee or judges with regard to the health of those contestants. The physician shall examine each contestant before entering the ring.

(2) The licensed physician shall file with the commission the report of the physical examination of a contestant not later than 24 hours after termination of the contest or exhibition.

(3) If, in the opinion of the physician, the health or safety of a contestant requires that the contest or exhibition in which he or she is participating be terminated, the physician shall notify the referee. The referee shall terminate the contest or exhibition.

**History:** 2004, Act 403, Eff. Feb. 20, 2005;—Am. 2007, Act 196, Eff. Mar. 27, 2008.

### **338.3658 Loss of consciousness; physical examination required; cost.**

Sec. 58. (1) If a contestant or participant loses consciousness during or as a result of a contest or exhibition in which he or she participates, he or she shall not again be eligible to participate in a contest or exhibition in this state unless examined by a physician appointed by the commission and unless the physician certifies the contestant's or participant's fitness to participate.

(2) The contestant or participant shall pay the cost of the examination conducted under subsection (1).

**History:** 2004, Act 403, Eff. Feb. 20, 2005;—Am. 2007, Act 196, Eff. Mar. 27, 2008.

## **CHAPTER 6**

### **338.3660 Repeal of Article 8 of 1980 PA 299, MCL 339.801 to 339.814 and MCL 338.2249.**

Sec. 60. (1) Article 8 of the occupational code, 1980 PA 299, MCL 339.801 to 339.814, is repealed 90 days after the date this act is enacted.

(2) Section 49 of the state license fee act, 1979 PA 152, MCL 338.2249, is repealed on the effective date of the rules promulgated under sections 22(2)(d) and 35.

**History:** 2004, Act 403, Eff. Feb. 20, 2005.

### **338.3661 Retention of rules.**

Sec. 61. Except as rescinded, rules promulgated under former article 8 of the occupational code, 1980 PA 299, MCL 339.801 to 339.814, retain authorization under this act.

**History:** 2004, Act 403, Eff. Feb. 20, 2005.

### **338.3662 Effective date.**

Sec. 62. This act takes effect 90 days after the date it is enacted.

**History:** 2004, Act 403, Eff. Feb. 20, 2005.

### **338.3663 Conditional effective date.**

Sec. 63. This act does not take effect unless House Bill No. 4336 of the 92nd Legislature is enacted into law.

**History:** 2004, Act 403, Eff. Feb. 20, 2005.

**ON-LINE CONTINUING EDUCATION ACT**  
**Act 70 of 2005**

AN ACT to provide for occupational regulatory agencies to allow the use of on-line or other electronic continuing education and continuing competency programs under certain circumstances; to provide for certain powers and duties for certain state regulatory agencies; and to provide for the promulgation of rules.

**History:** 2005, Act 70, Eff. July 1, 2007.

*The People of the State of Michigan enact:*

**338.3701 Short title.**

Sec. 1. This act shall be known and may be cited as the "on-line continuing education act".

**History:** 2005, Act 70, Eff. July 1, 2007.

**338.3702 Definitions.**

Sec. 2. As used in this act:

(a) "Continuing education" means instructional courses designed to bring participants up to date on a particular area of knowledge or skills.

(b) "License" means a certificate, registration, accreditation, or license issued by an occupational regulatory agency that allows an individual to engage in a regulated occupation or that allows an individual to use a specific title or professional designation in the practice of an occupation, profession, or vocation.

(c) "Occupational regulatory agency" means a department, bureau, or agency of this state that has regulatory authority over a regulated occupation.

(d) "Regulated occupation" means an occupation, profession, or vocation that requires a license as a predicate for the practice of the occupation, profession, or vocation or that provides for the use of a specific title or professional designation in the practice of the occupation, profession, or vocation.

**History:** 2005, Act 70, Eff. July 1, 2007.

**338.3703 Continuing education as license renewal requirement; credit earned through on-line or electronic media.**

Sec. 3. (1) Except as otherwise provided for in a specific act, or as otherwise required by a rule promulgated before the effective date of this act, concerning a regulated occupation, the occupational regulatory agency requiring a program of continuing education as part of a program of continuing professional competency for renewal of a license shall, to the extent practicable, allow at least 1/2 of the required credit hours of continuing education to be earned through an on-line or electronic media meeting standards acceptable to the occupational regulatory agency.

(2) If the occupational regulatory agency does not allow at least 1/2 of the required credit hours of continuing education to be earned through an on-line or electronic media, the director shall notify the legislative committee of the senate and house of representatives having jurisdiction over licensing matters. The notification shall be in writing and shall explain why on-line or electronic media is not practicable.

(3) This act does not apply to continuing education or training programs offered as part of a licensure, registration, certification, or accreditation program that must be approved by an agency of the federal government.

**History:** 2005, Act 70, Eff. July 1, 2007.

**338.3704 Rules.**

Sec. 4. Except as otherwise provided by law, an occupational regulatory agency may promulgate rules or amend existing rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to implement this act.

**History:** 2005, Act 70, Eff. July 1, 2007.

**338.3705 Effective date.**

Sec. 5. This act takes effect July 1, 2007.

**History:** 2005, Act 70, Eff. July 1, 2007.

**MICHIGAN PROFESSIONAL EMPLOYER ORGANIZATION REGULATORY ACT**  
**Act 370 of 2010**

AN ACT to license and regulate professional employer organizations; to define certain relationships and allocate certain rights and duties between those relationships; to provide for certain powers and duties for state agencies; to impose certain fees and provide for certain security devices; and to provide for penalties and remedies.

**History:** 2010, Act 370, Eff. July 1, 2011.

*The People of the State of Michigan enact:*

**338.3721 Short title.**

Sec. 1. This act shall be known and may be cited as the "Michigan professional employer organization regulatory act".

**History:** 2010, Act 370, Eff. July 1, 2011.

**338.3723 Definitions.**

Sec. 3. As used in this act:

- (a) "Client" means any person who enters into a professional employer agreement with a PEO.
- (b) "Coemployer" means either a PEO or a client.
- (c) "Coemployment relationship" means a relationship that is intended to be an ongoing relationship rather than a temporary or project-specific one, wherein the rights, duties, and obligations of an employer arising out of an employment relationship have been allocated between coemployers pursuant to a professional employer agreement.
- (d) "Covered employee" means an individual having a coemployment relationship with a PEO and a client who has received written notice of coemployment with the PEO and the individual has created a coemployment relationship pursuant to a professional employer agreement. Covered employee includes individuals who are officers, directors, shareholders, partners, and managers of the client to the extent the PEO and the client have expressly agreed in the professional employer agreement that those individuals are considered covered employees and those individuals act as operational managers or perform day-to-day operational services for the client.
- (e) "Department" means the department of energy, labor, and economic growth.
- (f) "Director" means the director of the department.
- (g) "Licensee" means a PEO licensed under this act.
- (h) "PEO group" means 2 or more PEOs that are majority owned or commonly controlled by the same entity, parent, or controlling person.
- (i) "Person" means any individual, partnership, corporation, limited liability company, association, or any other legal entity.
- (j) "Professional employer agreement" means a written contract by and between a client and a PEO that provides for the following:
  - (i) Coemployment of covered employees.
  - (ii) The allocation of employer rights and obligations between the client and the PEO with respect to the covered employees.
  - (iii) Assumption of responsibilities by the PEO and the client as required by this act.
- (k) "PEO" or "professional employer organization" means any person engaged in the business of providing professional employer services regardless of its use of a descriptive term other than "professional employer organization" or "PEO". PEO does not include any of the following:
  - (i) An arrangement in which a person, whose principal business activity is not entering into professional employer agreements and does not hold itself out as a PEO, shares employees with a commonly owned company within the meaning of section 414(b) and (c) of the internal revenue code of 1986, 26 USC 414.
  - (ii) A provider of temporary help services as defined by section 29 of the Michigan employment security act, 1936 (Ex Sess) PA 1, MCL 421.29.
  - (iii) Independent contractor arrangements by which a person assumes responsibility for the product produced or service performed by that person or his or her agents and retains and exercises primary direction and control over the work performed by the individuals whose services are supplied under such arrangements.
- (l) "Professional employer service" means the service of entering into a coemployment relationship in which all or a majority of the employees providing services to a client or to a division or work unit of the client are covered employees.

**History:** 2010, Act 370, Eff. July 1, 2011.

**338.3725 Professional employer agreement; effect.**

Sec. 5. (1) Neither this act nor a professional employer agreement shall affect, modify, or amend any collective bargaining agreement, or the rights or obligations of any client, PEO, or covered employee under any state or federal act.

(2) Neither this act nor any professional employer agreement shall do any of the following:

(a) Diminish, abolish, or remove rights of covered employees owed to a client or obligations of that client to a covered employee regarding rights or obligations existing prior to the effective date of the professional employer agreement.

(b) Affect, modify, or amend any contractual relationship or restrictive covenant between a covered employee and any client in effect at the time a professional employer agreement becomes effective or that is entered into subsequently between a client and a covered employee.

(3) Neither this act nor any professional employer agreement shall affect, modify, or amend any state, local, or federal licensing, registration, certification, or other regulatory requirement applicable to any client or covered employee. A PEO is not considered to be engaged in any occupation, trade, profession, or other activity that is subject to licensing, registration, or certification requirements, or is otherwise regulated by a governmental entity solely by entering into and maintaining a coemployment relationship with a covered employee who is subject to those requirements or regulations.

(4) Unless otherwise provided by law and with respect to a bid, contract, purchase order, or agreement entered into with the state or a political subdivision of the state, a client company's status or certification as a small, minority-owned, disadvantaged, or woman-owned business enterprise or as a historically underutilized business is not affected due to the client company's execution of an agreement with a PEO or to the use of the services of a PEO.

**History:** 2010, Act 370, Eff. July 1, 2011.

**338.3727 Provider of professional employer services; license; fee; application; prohibitions relating to person convicted of certain felony; filing by PEO operating on effective date of act; renewal application; combined or consolidated audited financial statement; electronic filings.**

Sec. 7. (1) Except as otherwise provided in this act, beginning September 1, 2012, a person shall not provide, advertise, or otherwise hold itself out as providing professional employer services in this state, unless licensed or exempt from licensure under this act.

(2) An applicant for licensure shall submit to the department the application fee imposed in section 13 and a completed application that provides the following information:

(a) The name or names under which the PEO conducts business.

(b) The address of the principal place of business of the PEO and the address of each office it maintains in this state.

(c) The PEO's taxpayer or employer identification number.

(d) A list by jurisdiction of each name under which the PEO has operated in the preceding 5 years, including any alternative names, names of predecessors, and, if known, successor business entities.

(e) A statement of ownership that includes the name and evidence of the business experience of any person, individually or acting in concert with 1 or more other persons, that directly or indirectly owns or controls 10% or more of the equity interests of the PEO.

(f) A statement of management that includes the name and evidence of the business experience of any individual who serves as president or chief executive officer or otherwise has the authority to act as senior executive officer of the PEO.

(g) A financial statement describing the financial condition of the PEO or PEO group, prepared in accordance with generally accepted accounting principles and audited by an independent certified public accountant licensed to practice in the jurisdiction in which that accountant is located and is without qualification as to the going concern status of the PEO. A PEO group may submit combined or consolidated audited financial statements to meet the requirements of this subsection. A PEO that has not had sufficient operating history to have audited financials based on at least 12 months of operating history must meet the financial capacity requirements described in section 15 and present financial statements reviewed by a licensed certified public accountant.

(h) A financial audit of the applicant. At the time of application for an initial license, the applicant shall submit its most recent audit, which may not be older than 13 months. Thereafter, a PEO or PEO group shall file on an annual basis, within 270 days after the end of the PEO or PEO group's fiscal year, a succeeding

audit. An applicant may apply to the department for an extension, except that any request must include a letter from the auditors stating the reasons for the delay and the anticipated audit completion date.

(i) A certification that the PEO has made an election under section 13m of the Michigan employment security act, 1936 (Ex Sess) PA 1, MCL 421.13m.

(3) Beginning September 1, 2012, a person that has been convicted of a felony related to the operation of a PEO shall not own or control, directly or indirectly, a PEO doing business in this state.

(4) Each PEO operating in this state on the effective date of this act shall file its completed application and submit the license fee by July 1, 2012.

(5) Before a license expires, the licensee may renew its license by submitting a renewal application to the department that includes any changes in the information provided in the licensee's prior application.

(6) PEOs in a PEO group may satisfy the reporting and financial requirements of this section on a combined or consolidated basis if each member of the PEO group guarantees the obligations under this act of each other member of the PEO group. If a PEO group submits a combined or consolidated audited financial statement, including entities that are not PEOs or that are not in the PEO group, the controlling entity of the PEO group under the consolidated or combined statement must guarantee the obligations of the PEOs in the PEO group. The department shall determine whether the requirements of this subsection are satisfied.

(7) The department shall, to the extent practical, accept electronic filing of applications, documents, reports, and other filings required under this act. The department may accept electronic filings and other assurance by an independent and qualified assurance organization that provides satisfactory assurance of compliance acceptable to the department consistent with, or in lieu of, the requirements of this section, sections 9 and 15, and other requirements of this act. The department shall allow a PEO to authorize an assurance organization, approved by the director, to act on the PEO's behalf in complying with the licensure requirements of this act including, but not limited to, electronic filings of information and payment of license fees. Use of an approved assurance organization by a PEO is optional. This subsection does not limit or change the department's authority to license, to rescind, revoke, or deny a license, or to investigate or enforce any provision of this act.

**History:** 2010, Act 370, Eff. July 1, 2011;—Am. 2011, Act 125, Eff. Jan. 1, 2012.

### **338.3729 Limited license.**

Sec. 9. (1) Beginning September 1, 2012, the department may issue a limited PEO license. A PEO seeking limited licensure under this section shall submit to the department a properly executed and completed application on a form provided by the department and include with the application the license fee for limited licensure established by the department.

(2) A PEO is eligible for a limited license if it meets all of the following conditions:

(a) Is domiciled outside this state and is licensed or otherwise regulated as a PEO in another state.

(b) Does not maintain an office in this state or does not directly solicit clients located or domiciled in this state.

(c) Does not have more than 50 covered employees employed or domiciled in this state on any given day.

(3) A limited license is valid for 1 year and may be renewed.

(4) Section 15 does not apply to an applicant for a limited license.

**History:** 2010, Act 370, Eff. July 1, 2011;—Am. 2011, Act 125, Eff. Jan. 1, 2012.

### **338.3731 List of licensed PEOs; availability to public.**

Sec. 11. The department shall maintain a list of PEOs licensed under this act. The list shall be readily available to the public by electronic or other means.

**History:** 2010, Act 370, Eff. July 1, 2011.

### **338.3733 License fees; adjustment; "Detroit consumer price index" defined.**

Sec. 13. (1) The department may charge an application fee for an initial license under this act. The amount of the fee shall be determined by the department and shall not exceed \$1,500.00 for an individual license or \$1,500.00 for a PEO group license.

(2) Except for an initial license, the term of a license issued under this act is 1 year, beginning on September 1 and expiring on August 31 of the next calendar year.

(3) The department shall issue an initial license under this act for a term from the effective date of that initial license, as determined by the department, to the next August 31 after that effective date or, at the option of the department, to the second August 31 after the effective date. If the effective date of the license is not September 1, the department shall adjust the amount of the annual license fee under subsection (4) for that initial term on a pro rata basis to reflect the length of the initial term, as determined by the department.

(4) Subject to subsection (3), the annual license fee is \$1,500.00 for an individual license and \$1,500.00 for a PEO group license.

(5) The department may adjust the license fees under this section every 2 years by an amount determined by the state treasurer to reflect the cumulative annual percentage change in the Detroit consumer price index in the preceding 2-year period and rounded to the nearest dollar. As used in this subsection, "Detroit consumer price index" means the most comprehensive index of consumer prices available for the Detroit area by the bureau of labor statistics of the United States department of labor.

**History:** 2010, Act 370, Eff. July 1, 2011;—Am. 2011, Act 125, Eff. Jan. 1, 2012.

### **338.3735 Working capital; requirements.**

Sec. 15. Unless otherwise exempt under this act, beginning September 1, 2012, each PEO or collectively each PEO group shall submit to the department evidence of and maintain either of the following:

(a) A minimum of \$100,000.00 in working capital, as defined by generally accepted accounting principles, as reflected in the financial statements submitted to the department with the initial license application and each annual renewal application. A PEO or PEO group with less than \$100,000.00 in working capital at renewal has 180 days to eliminate the deficiency in a manner acceptable to the department. During that 180-day period, the PEO or PEO group shall submit quarterly financial statements to the department accompanied by an attestation of the chief executive officer that all wages, taxes, worker's compensation premiums, and employee benefits have been paid by the PEO or members of the PEO group.

(b) A bond, irrevocable letter of credit, or securities with a minimum market value of \$100,000.00, acceptable to the department. The bond shall be held by a depository designated by the department to secure payment by the PEO of all taxes, wages, benefits, or other entitlements due to, or regarding, covered employees, if the PEO or PEO group does not make those payments when due. For any PEO or PEO group whose annual financial statements do not indicate positive working capital, the PEO shall provide a bond in the amount of \$100,000.00 plus an amount sufficient to cover the deficit in working capital.

**History:** 2010, Act 370, Eff. July 1, 2011;—Am. 2011, Act 125, Eff. Jan. 1, 2012.

### **338.3737 Professional employer agreement; provisions; written notice to covered employee affected by agreement.**

Sec. 17. (1) Each professional employer agreement executed on or after September 1, 2012 shall include the following provisions:

(a) The responsibility of the PEO to pay wages to covered employees; to withhold, collect, report and remit payroll-related and unemployment taxes; and, to the extent the PEO has assumed responsibility in the professional employer agreement, to make payments for employee benefits for covered employees. For purposes of this subdivision, wages do not include any obligation between a client and a covered employee for payments beyond, or in addition to, the covered employee's salary, draw, or regular rate of pay, including bonuses, commissions, severance pay, deferred compensation, profit sharing, or vacation, sick, or other paid time off pay, unless the PEO has expressly agreed to assume liability for those payments in the professional employer agreement.

(b) The hiring, disciplining, and termination by the PEO of a covered employee, as necessary to fulfill the PEO's responsibilities under this act and the professional employer agreement. The client may also hire, discipline, and terminate a covered employee.

(c) The responsibility of the client and the PEO to comply with the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941.

(2) Each professional employer agreement executed on or after September 1, 2012 shall require that the PEO provide written notice to each covered employee affected by the agreement regarding the general nature of the coemployment relationship between and among the PEO, the client, and that covered employee.

**History:** 2010, Act 370, Eff. July 1, 2011;—Am. 2011, Act 125, Eff. Jan. 1, 2012.

### **338.3739 Professional employer agreement; liabilities or obligations; tax or assessment.**

Sec. 19. (1) Except to the extent otherwise expressly provided for by the professional employer agreement, the following apply:

(a) A client is solely responsible for the quality, adequacy, or safety of the goods or services produced or sold in the client's business.

(b) A client is solely responsible for directing, supervising, training, and controlling the work of the covered employees with respect to the business activities of the client and is solely responsible for the acts, errors, or omissions of the covered employees regarding those activities.

(c) A client is not liable for the acts, errors, or omissions of a PEO or of any covered employee of the client



and a PEO when the covered employee is acting under the express direction and control of the PEO.

(d) A PEO is not liable for the acts, errors, or omissions of a client or of any covered employee of the client when the covered employee is acting under the express direction and control of the client.

(2) This section does not limit any contractual liability or obligation specifically provided in the written professional employer agreement.

(3) A covered employee is not, solely as the result of being a covered employee of a PEO, an employee of the PEO for purposes of general liability insurance, fidelity bonds, surety bonds, employer's liability not covered by worker's compensation, or liquor liability insurance carried by the PEO unless covered employees are included by specific reference in the professional employer agreement and applicable prearranged employment contract, insurance contract, or bond.

(4) A PEO is not considered engaged in the sale of insurance or in acting as a third party administrator by offering, marketing, selling, administering, or providing professional employer services that include services and employee benefit plans for covered employees.

(5) A client and a PEO are each considered an employer for purposes of sponsoring retirement and welfare benefit plans for its covered employees. A fully insured welfare benefit plan offered to the covered employees of a single PEO shall be treated, for purposes of state law, as a single employer welfare benefit plan.

(6) For purposes of this state or any political subdivision of this state and except as otherwise specifically provided for PEO arrangement by law, covered employees whose services are subject to sales tax are considered the employees of the client for purposes of collecting and levying sales tax on the services performed by the covered employee. This act does not relieve a client of any sales tax liability with respect to its goods or services.

(7) Except as otherwise specifically provided for PEO arrangement by law, a tax or assessment imposed upon professional employer services or any business license or other fee that is based upon gross receipts shall allow a deduction from the gross income or receipts of the business derived from performing professional employer services that is equal to that portion of the fee charged to a client that represents the actual cost of wages and salaries, benefits, worker's compensation insurance, payroll taxes, withholding, or other assessments paid to, or on behalf of, a covered employee by the professional employer organization under a professional employer agreement.

(8) Except as otherwise specifically provided for PEO arrangement by law, a tax assessed, assessment, or mandated expenditure on a per capita or per employee basis shall be assessed against the client for covered employees and against the professional employer organization for its employees who are not covered employees co-employed with a client. Benefits or monetary consideration that meet the requirements of mandates imposed on a client and that are received by covered employees through the PEO, either through payroll or through benefit plans sponsored by the PEO, shall be credited against the client's obligation to fulfill those mandates.

(9) Except as otherwise specifically provided for PEO arrangement by law and in the case of a tax or an assessment imposed or calculated upon the basis of total payroll, the professional employer organization is eligible to apply any small business allowance or exemption available to the client for the covered employees for the purpose of computing the tax.

**History:** 2010, Act 370, Eff. July 1, 2011.

### **338.3741 Prohibited conduct; opportunity for hearing; penalties.**

Sec. 21. (1) Beginning September 1, 2012, a person that commits 1 or more of the following is subject to the penalties described in subsection (2):

(a) Practices fraud or deceit in obtaining or renewing a license.

(b) Aids or abets another person in the unlicensed practice of an occupation.

(c) Engages in activities regulated under this section without obtaining a license under this act or demonstrating that the person is exempt from licensure under this act.

(d) If the person is a licensee or an officer of a licensee, is convicted of a crime relating to the operation of a PEO.

(e) Engages in false advertising.

(2) After notice and opportunity for hearing under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, the department shall do 1 or more of the following if it determines that a person violated this act, a rule adopted under this act, or an order issued under this act:

(a) Place a limitation on a license.

(b) Suspend a license.

(c) Deny a license or renewal of a license.

(d) Revoke a license.

- (e) Impose an administrative fine to be paid to the department, not to exceed \$5,000.00.
- (f) Censure the person or license.
- (g) Place the licensee on probation.
- (h) Require restitution to be made, based on proofs submitted to and findings made by the hearing examiner after a contested case.

**History:** 2010, Act 370, Eff. July 1, 2011;—Am. 2011, Act 125, Eff. Jan. 1, 2012.

### **338.3743 Violation of act as misdemeanor; penalty.**

Sec. 23. Beginning September 1, 2012, a person that knowingly and willfully violates this act, or that aids and abets, directly or indirectly, a violation of this act, is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$10,000.00, or both.

**History:** 2010, Act 370, Eff. July 1, 2011;—Am. 2011, Act 125, Eff. Jan. 1, 2012.

### **338.3745 Rules.**

Sec. 25. The department shall promulgate consistent and necessary rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, as considered necessary to implement this act.

**History:** 2010, Act 370, Eff. July 1, 2011.

### **338.3747 Effective date.**

Sec. 27. This act takes effect January 1, 2012.

**History:** 2010, Act 370, Eff. July 1, 2011;—Am. 2011, Act 125, Eff. Jan. 1, 2012.